

GROUND LEASE

(_____)

by and between

**THE CITY OF SANTA CLARA,
Landlord,**

and

_____,

Lessee

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LEASE AGREEMENT

This LEASE AGREEMENT (this “**Lease**”) is dated as of _____, 2019 (the “**Commencement Date**”), between the CITY OF SANTA CLARA, a California municipal corporation (“**Landlord**”) and _____, a California limited partnership (“**Lessee**”), who agree as follows:

RECITALS

A. The Landlord is the owner of that certain real property located in the City of Santa Clara (“**City**”) and described in the Legal Description attached hereto as Exhibit A and incorporated herein by this reference (the “**Property**”).

B. The Landlord desires to lease the Property to Lessee and have Lessee construct, own, manage and operate the Improvements comprising 165 units of age-restricted senior housing (in accordance with applicable California and federal law), of which (1) 82 units shall be leased to senior low-income households at or below 60% of area median income, (2) 81 units shall be leased to senior low-households at or below 80% area median income, and (3) 2 units shall be leased to senior moderate-income households used as non-revenue manager’s units, using the income limits used for the Santa Clara MSA, as published approximately annually by the California Department of Housing and Community Development (“**HCD**”), as required under the Agreement Containing Covenants made by the City of Santa Clara and recorded against the Property on or about the Commencement Date (the “**State Regulatory Agreement**”).

NOW, THEREFORE, in consideration of the foregoing, the Landlord and Lessee agree as follows:

ARTICLE 1 FUNDAMENTAL INFORMATION

1.1 Landlord: The City of Santa Clara, a California municipal corporation.

1.2 Lessee: _____, a California limited partnership. All references in this Lease to the “**Lessee**” shall mean and refer to Lessee or any successor or assign, as the context may require.

1.3 Commencement Date: The Commencement Date shall be the date set forth in the introductory paragraph, above.

1.4 The Premises: The property leased hereunder (the “**Property**”) is described in Recital A, above.

1.5 Term: The Term of this Lease is set forth in Section 2.3, below.

1.6 Landlord's address for notices:

City Manager’s Office
The City of Santa Clara

1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Manager

1.7 Lessee's address for notices:

470 S. Market Street
San Jose, California 95113
Attention: Christopher Neale

With a copy to:
[Investor Limited Partner]

1.8 Lessee's Rent: Lessee shall pay, as rent for the Property, an annual amount as provided in Section 2.4, below.

ARTICLE 2 TERMS AND PROVISIONS

2.1 AGREEMENT TO LEASE

2.1.1 Landlord hereby leases the Property to Lessee, and Lessee hereby leases the Property from Landlord, subject to the provisions and conditions herein set forth.

2.2 ACCEPTANCE OF PROPERTY

2.2.1 Landlord makes no representations, expressed or implied, with respect to the legality, fitness, or desirability of the Property for Lessee's intended use. If Lessee desires to do so, Lessee shall have the right to conduct its own investigation, to its satisfaction, with respect to any matters affecting Lessee's ability to use the Property for Lessee's intended use.

2.3 TERM

2.3.1 Term. The Lease term (the “**Term**”) shall commence on the Commencement Date and shall continue for fifty-five (55) years after the issuance of the temporary certificate of occupancy for the Improvements, unless earlier terminated in accordance with this Lease.

2.3.2 Termination. Subject to the notice and cure provisions of Sections 2.20 and 2.23 below, Landlord may terminate this Lease by giving written notice of termination to Lessee in the event of any default under this Lease that is not cured within the applicable cure period. In such event, Landlord shall retain any and all Rent paid by Lessee to Landlord as a measure of damages; provided, however, nothing herein shall limit any other remedies, including damages, available to Landlord in accordance with the terms and provisions of this Lease.

2.3.3 Surrender. Subject to the damage and reconstruction provisions of Section 2.19, Lessee shall upon the expiration or sooner termination of this Lease immediately surrender the Property and the Improvements to Landlord in good and clean condition, ordinary wear and

tear excepted, including any buildings, structures, improvements or additions located on the Property. All personal property not removed by Lessee, shall, without compensation to Lessee, then become Landlord's property, free and clear of all claims to or against them by Lessee or any third person, firm or entity.

2.3.4 State Grant Deed Compliance and Reverter.

(a) Lessee acknowledges that the Property is subject to the State of California Grant Deed (Senior Housing Site) recorded against the Property (and other real property) in the Official Records of Santa Clara County 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 of Santa Clara County on January 4, 2017 as document number 25550600[, as modified by [any agreement with the State of California] (collectively, the “**State Grant Deed**”). Lessee hereby agrees to comply with the State Grant Deed to the extent it applies to the Property.

(b) [Pursuant to Section 4 the State Grant Deed, the Property is subject to a right of reverter held by the State of California if certain development and construction activities are not completed by January 5, 2023 (the “**Reverter**”). Lessee is solely responsible for complying with Section 4 of the State Grant Deed and thereby preventing exercise of the Reverter by the State of California.][This subsection subject to modification based on the future agreement with the State of California.]

2.4 RENT

2.4.1 Rent. The Rent payable for each Lease Year (the “**Rent**”) shall be as set forth in Section 2.4.2 hereto. Rent shall be paid in arrears for each calendar year (or portion of a calendar year for the first and last months of the Term) no later than April 30 of the following calendar year during the Term. The Rent shall be prorated on a per diem basis for the first and last partial years of the Term (assuming the Commencement Date is not January 1). The last payment of Rent shall be due within twenty (20) days following the termination of this Lease.

2.4.2 Rent Amounts. Rent shall be in the amount of \$1. Landlord acknowledges receipt of prepaid the Rent for Term on the Commencement Date.

2.4.3 Payment of Rent. At Lease expiration or sooner termination all Rent accrued but not paid shall be due and payable.

2.4.4 Miscellaneous. All payments of Rent shall be made to Landlord as they become due in lawful money of the United States of America in cash or by corporate check drawn on sufficient available funds, at such place as is designated herein by Landlord for the receipt of notices or such other place as shall be designated to Lessee by Landlord in writing from time to time.

2.4.5 Records and Audit. At all times during the Term, Lessee shall keep and maintain complete, accurate and customary records and books of account relating to the Property and shall retain such materials for the two (2) most recent completed years under this Lease. At all reasonable times during normal business hours, either on the Property or such other office of

Lessee at which said records and books of account may be kept, Landlord and its duly authorized agents, attorneys and accountants shall have the right to inspect, audit and make copies of any and all of such records and books of account, including copies of any information returns required by or furnished to any governmental authority, together with any and all other records and documents relating to the Property. If Lessee does not maintain such books and records at an office within fifty (50) miles of the Property, then Lessee shall prepare and deliver to Landlord certified duplicates of such books and records upon Landlord's request, provided that Landlord shall not make such requests more than once every twelve (12) months.

2.4.6 Rent Generally. All Rent shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the installments of all Rent throughout the Term. This Lease is and shall be a "Pure Net" or "Triple Net" lease, as such terms are commonly used in the real estate industry, it being intended that Lessee shall pay all costs, expenses and charges arising out of the use, occupancy and operation of the Property.

2.5 USE

2.5.1 For the Term of this Lease, Lessee shall use the Property for any lawful purpose.

2.5.2 Lessee shall construct the Improvements on the Property in accordance with the terms and conditions of the Loan Agreement.

2.5.3 Lessee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or interest therein, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Lessee, itself or any person claiming under or through it, 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, subtenants, sublessees, or vendees of the Property.

2.5.4 All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or 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."

(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.”

(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 the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself 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 of the land.”

2.5.5 Lessee shall not cause, maintain, or permit any nuisance or waste in, on, or about the Property.

2.5.6 Lessee shall comply with all regulatory agreements and restrictive covenants recorded against the Property including, without limitation, the State Grant Deed and the State Regulatory Agreement.

2.6 COMPLIANCE WITH LAW

2.6.1 Lessee shall not use the Property or permit anything to be done in or about the Property which will in any way conflict with any applicable law, statute, ordinance, or governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated.

2.6.2 The judgment of any court of competent jurisdiction or the admission of Lessee in any action against Lessee, whether Landlord be a party thereto or not, that Lessee has violated any law, statute, ordinance, or governmental rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Lessee.

2.7 ALTERATIONS AND ADDITIONS

2.7.1 Except as set forth in Section 2.5.2, above, after the completion of the initial Improvements, Lessee shall not make any alterations, additions, or improvements to or on

the Property or any building or structure thereon or any part thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

2.8 REPAIRS

2.8.1 Lessee shall, without cost or expense to the Landlord, (a) keep and maintain any buildings on the Property in good condition and repair, ordinary wear and tear excepted, and keep and maintain the remaining Property in at least the same condition it was in after completion of the Improvements, ordinary wear and tear excepted; and (b) undertake such maintenance of the Property from time to time as may be reasonable and customary under the circumstances.

2.9 TAXES

2.9.1 To the extent applicable, Lessee shall promptly pay, or cause to be paid prior to delinquency, all real estate and real property taxes, or possessory interest tax, assessed against the Property and the Improvements thereon. In addition, to the extent applicable, Lessee shall, during the term of this Lease, pay any levy for the installation, maintenance or operations of local improvements affecting the Property and the Improvements as may be assessed by any governmental boards or bureaus having jurisdiction thereof.

2.9.2 Lessee shall have the right, by appropriate proceedings, to protest or contest in good faith any assessment or re-assessment of taxes, any special assessment, or the validity of any taxes or of any change in assessment or tax rate; provided, however, prior to any such challenge Lessee must either (a) pay the taxes alleged to be due in their entirety and seek a refund from the appropriate authority, or (b) post bond in an amount sufficient to insure full payment of the taxes.

2.9.3 To the extent applicable, Lessee shall pay any and all personal property taxes assessed against equipment, trade fixtures, inventory, or other personal property located in, on, or about the Property and the Improvements. Lessee shall indemnify, defend, and hold Landlord and the Property harmless from and against any such personal property taxes.

2.10 CHANGE IN CONTROL OF LESSEE, ASSIGNMENT AND SUBLETTING

2.10.1 The qualifications and identities of Lessee and its general partners are of particular concern to the Landlord. It is because of those qualifications and identity that the Landlord has entered into this Lease with Lessee. Except as otherwise provided in this Lease, there shall be no change in management or control of the Lessee without the prior approval of Landlord. Except as otherwise permitted by this Lease, including, without limitation, Section 2.23, below, neither Lessee nor its general partners shall assign all or any part of their rights pursuant to this Lease to any other entity without the prior written approval of the Landlord.

2.10.2 Lessee shall have the right from time to time to enter into subleases or rental agreements with tenants for occupancy of the Property.

2.10.3 Except as provided in this Section 2.10, in Section 2.23 below, or in the Loan Agreement, the Lessee shall have no right to transfer, assign, sublease, convey or encumber

its interests in the Property without the express prior written consent of Landlord. A consent by Landlord to one such transfer, assignment, sublease, conveyance or encumbrance shall not be deemed to be consent to any subsequent transfer, assignment, sublease, conveyance or encumbrance. Any transfer, assignment, sublease, conveyance or encumbrance not approved by Landlord or not deemed approved pursuant to the terms of this Lease shall be void and shall constitute a breach of this Lease.

2.10.4 Lessee shall have the right to transfer its interests in this Lease and the Property to an entity that assumes the rights and obligations of Lessee as the result of a reorganization or similar event, subject to Landlord approval of the documentation effectuating such reorganization or similar event, which approval shall not be unreasonably withheld.

2.10.5 Notwithstanding anything to the contrary contained in this Lease, the Landlord will permit the limited partners of the Lessee to remove the general partner of the Lessee in accordance with the Lessee's Amended and Restated Agreement of Limited Partnership dated on or about the date hereof and any such removal shall neither constitute a default nor require Landlord's consent under this Lease; provided, however, that any substitute general partner shall be acceptable to the Landlord in its reasonable discretion. The limited partner of Lessee or an Affiliate thereof is an acceptable successor general partner of Lessee.

2.10.6 Notwithstanding anything to the contrary contained in this Lease, the following transfers are hereby permitted under this Lease without the prior written approval of the Landlord:

(a) An assignment of this Lease and all of Lessee's interests in the Property to an Affiliate (as defined below);

(b) A conveyance of a security interest in the Property or any portion thereof or interest therein or interest in the Lessee in connection with a loan not prohibited hereunder and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith;

(c) The inclusion of equity participation in the Lessee by addition of limited partners to Lessee's partnership or similar mechanism, and any transfers of limited partnership interests in Lessee's partnership;

(d) The lease for occupancy of all or any part of the Improvements on the Property;

(e) The granting of easements or permits to facilitate the development of the Property in accordance with the Loan Agreement;

(f) The withdrawal, removal and/or replacement of a general partner of Lessee pursuant to the terms of the Lessee's partnership agreement, provided that any required substitute general partner is reasonably acceptable to Landlord and is selected with reasonable promptness. The limited partner of Lessee or an Affiliate thereof is an acceptable successor general partner of Lessee;

(g) The assignment or replacement of the original managing general partner in the Lessee with a nonprofit public benefit corporation or Affiliate thereof, provided that any new general partner is reasonably acceptable to City; and

(h) The sale, transfer or pledge of any limited partnership interest in Lessee or of any partnership interest in the limited partner of Lessee.

“Affiliate” shall mean (1) any Person (as defined below) directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term “control” as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. For purposes of this definition, any general partner shall be considered an “Affiliate” of Lessee.

“Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

2.11 HOLD HARMLESS

2.11.1 Lessee shall indemnify, defend, and hold Landlord and the Property harmless from and against any and all costs, claims, demands, actions, causes of action, liability, loss, or damage, including attorney's fees and costs (collectively, “Claims”) whether for injury to or death of persons or damage to real or personal property or otherwise, arising out of or in connection with the Property, Lessee's use or occupancy of the Property, or arising from any reason or cause whatsoever in connection with the use or occupancy of the Property by any party during the term of this Lease. The preceding sentence shall not apply to any negligent or intentional acts or omissions of Landlord. Lessee shall further indemnify, defend, and hold Landlord harmless from and against any and all Claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease or arising from any act or negligence of Lessee or any officer, agent, employee, guest, or invitee of Lessee. In any action, or proceeding brought against Landlord or involving Landlord by reason of any such Claim, Lessee upon notice from Landlord shall defend the same at Lessee's expense by counsel reasonably satisfactory to Landlord. Lessee's obligation to indemnify under this paragraph shall include attorney's fees, investigation costs, and other reasonable costs, expenses, and liabilities incurred by Landlord.

2.11.2 Landlord or its agents shall not be liable for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from earthquake, fire, explosion, falling plaster, steam, gas, electricity, water, or rain which may leak from any part of the Property or from the pipes, appliances, or plumbing works therein or

from the roof, street, or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligent or intentional acts or omissions of Landlord. Lessee shall give prompt notice to Landlord in case of fire or accidents in the Property or of defects therein or in the fixtures or equipment.

2.12 OWNERSHIP OF PROPERTY DURING TERM AND UPON EXPIRATION OR TERMINATION OF LEASE

2.12.1 During the Term of this Lease, the Improvements, including all buildings, structures, fixtures, additions and improvements located on the Property (other than personal property owned by Landlord or others) shall be owned in fee by Lessee. The parties hereto agree that Lessee shall bear all risk of loss with respect to the Improvements and that the benefits and burdens of ownership of the Improvements are vested in Lessee. It is the intention of the parties that the Lessee be treated as owner of the Improvements for federal income tax purposes and shall have all the rights incidental thereto including, without limitation, the right to claim tax credits and depreciation deductions with respect to the Improvements.

2.12.2 Upon termination of this Lease, whether by expiration of the Term or otherwise, the Improvements and all personal property not removed by Lessee, shall then become the property of Landlord, subject to then existing liens thereon.

2.13 SUBROGATION

Neither Landlord nor Lessee shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits (even though such loss or damage might have been occasioned by the negligence of such party, its agents, or employees), if any such loss or damage is covered by insurance benefiting the party suffering the loss or damage. Landlord and Lessee hereby mutually release each other from liability and waive all right to recover against each other or against officers, employees, agents or representatives of each other for any loss or damage to any person or property caused by or resulting from risks insured against under any insurance policies carried by the parties; provided, however, this paragraph shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Landlord or Lessee. The parties shall, to the extent available, cause each insurance policy obtained here under to provide a waiver of subrogation.

2.14 LIENS

Except as otherwise provided herein, including, without limitation, Section 2.23 below, Lessee shall not create or permit any lien or encumbrance to be attached to or affect the Property by reason of any act or omission of Lessee. Lessee shall indemnify and hold harmless Landlord and the Property against any such lien, encumbrance, or claim of lien or encumbrance, and against any costs in connection therewith, including attorneys' fees.

2.15 INDEMNIFICATION AND INSURANCE

2.15.1 During the Term of this Lease, and for any required thereafter as set forth below, the Lessee shall purchase and maintain in full force and effect, at no cost to the Landlord, the following insurance policies:

- (1) Commercial general liability policy (bodily injury and property damage);
- (2) Comprehensive automobile liability policy (to the extent the Lessee uses any vehicles); and
- (3) Workers' compensation and employer's liability policy (to the extent Lessee has any employees).

2.15.2 Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Lease with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C entitled "Insurance Requirements" attached hereto and incorporated herein by this reference.

2.16 UTILITIES

Lessee shall make all arrangements for and pay for all services and utilities to the Property.

2.17 HOLDING OVER

In the event Lessee fails to vacate the Property and fulfill all of its obligations hereunder at the end of the Term, Lessee shall be liable for all damages incurred by Landlord by reason of the inability to deliver possession of the Property or any portion thereof to any other person.

2.18 ENTRY BY LANDLORD

Notwithstanding any provision to the contrary contained herein, Landlord reserves for itself, and its contractors, agents, employees, representatives or licensees, and shall at any and all times have the right, but not the obligation, to enter the Property, for the following purposes: (a) to respond to any emergency situation; (b) to inspect the Property, provided such inspections shall take place during normal business hours and upon not less than 5 calendar days' notice; (c) to post notices of non-responsibility; and (d) to alter, improve, or repair the Property as Landlord may deem necessary or desirable in the event Lessee fails to comply with an obligation under this Lease to alter, improve or repair the Property, subject to notice to Lessee and a reasonable opportunity for the Lessee to cure. Lessee shall allow access and occupancy of the Property by Landlord and its contractors, agents, employees, representatives or licensees as necessary for the purposes of this Section.

2.19 DAMAGE, RECONSTRUCTION

2.19.1 In the event the Property is damaged by fire or other perils covered by extended coverage insurance, Lessee shall have the right to use all available insurance proceeds to repair or rebuild the Improvements. If the estimated cost of repairs is not in excess of available

insurance proceeds, then Lessee shall forthwith repair the same (using the insurance proceeds to pay the cost of such repair) and this Lease shall remain in full force and effect.

2.19.2 (a) In the event the Property is damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, or the estimated cost of repairs is in excess of available insurance proceeds, then Lessee shall notify Landlord in writing of the amount by which the estimated cost of repairs exceeds such proceeds (the “**Shortfall**”), and Lessee shall have the right, within ninety (90) days after receipt of such notice, to elect to provide the Shortfall and proceed with such repairs (using the insurance proceeds and such other funds as Lessee may provide to pay the Shortfall), in which case this Lease shall continue in full force and effect.

If Lessee fails to notify Landlord within such ninety (90) day period that it will provide the Shortfall and conduct the repairs, then Landlord shall have the option, within thirty (30) days from the end of the thirty day period described in clause (a), either to (1) provide the Shortfall at Landlord's sole expense and direct Lessee to repair or restore such damage (using the insurance proceeds and such additional funds as Landlord may provide to pay the Shortfall), with this Lease continuing in full force and effect, or (2) subject to Section 2.23 below and after having provided notice and an opportunity to cure to any Permitted Leasehold Mortgagee and the Lessee's limited partners, give notice to Lessee terminating this Lease as of the date specified in such notice, which date shall be no less than ninety (90) and no more than one hundred twenty (120) days after the giving of such notice of termination. In the event of giving such notice of termination, this Lease shall expire and all interest of the Lessee in the Property shall terminate on the date so specified in such notice.

2.19.3 Lessee shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Property, Lessee's personal property, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration. Lessee waives the provisions of California Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Property.

2.19.4 Notwithstanding anything contained in this Section 2.19 to the contrary, any rights of Landlord under this Section 2.19, including, without limitation, any right to terminate this Lease, shall be expressly subject to the rights of any Permitted Leasehold Mortgagee and to the terms and conditions of any Permitted Leasehold Mortgage.

2.20 DEFAULT

2.20.1 Subject to Force Majeure delay, the failure by either the Landlord or Lessee to observe or perform any covenants, conditions, or provisions of (a) this Lease or (b) after the reconveyance and/or release of the City Deed of Trust, the Agreement Containing Covenants, to be observed or performed by such party shall constitute a default and breach of this Lease. The party in default must immediately commence to cure, correct or remedy such breach and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default, so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, and provided such cure, correction or remedy is completed within the applicable time period set forth herein after receipt of written notice.

2.20.2 If a monetary event of default occurs, prior to exercising any remedies hereunder, the complaining party shall give the party in default written notice of such default. The party in default shall have a period of ten (10) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the complaining party.

2.20.3 If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the complaining party shall give party in default written notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the complaining party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the complaining party.

2.20.4 If Lessee fails to take corrective action or cure the default within a reasonable time, Landlord shall give Lessee and, as provided in Section 2.20.5, below, the limited partner of Lessee notice thereof, whereupon, subject to the terms of Lessee's partnership agreement, the limited partner of Lessee may remove and replace the general partner with a substitute general partner, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. Landlord agrees to accept cures tendered by the limited partner of Lessee within the cure periods provided in this Agreement or within the time periods provided in Civil Code Section 2924c, whichever is longer. Additionally, in the event the limited partner of Lessee is precluded from curing a non-monetary default due to an inability to remove the general partner as a result of a bankruptcy, injunction, or similar proceeding by or against Lessee or its general partner, Landlord agrees to forbear from terminating this Lease during the period during which the limited partner of Lessee is so precluded from acting, not to exceed 180 days, provided such limited partner is otherwise in compliance with the foregoing provisions. In no event shall the injured party be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

2.20.5 After Lessee gives written notice to Landlord that the limited partner has been admitted to the Lessee as a general partner, Landlord shall send to the limited partner a copy of all notices of default and all other notices that Landlord sends to Lessee, at the address for the limited partner as provided in Section 1.7. In addition, Landlord shall send to any Permitted Leasehold Mortgagee, as defined in Section 2.23.1(c), a copy of all notices of default and all other notices that Landlord sends to Lessee as provided in Section 2.23.5(b) below.

2.20.6 If any default or breach is not cured by the party in default within the respective period of time provided in this Section 2.20, then the complaining party shall be entitled to exercise any and all rights or remedies which may be available at law or in equity, including terminating this Lease. Any and all rights or remedies available to the parties shall be cumulative, and not alternative.

2.20.7 Mediation. Any controversies between Landlord and Lessee regarding the construction or application of this Lease, and claims arising out of this Lease or its breach, shall

be submitted to mediation within thirty (30) days of the written request by one party after the written notice of that request on the other party.

(a) The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request that the Superior Court of Santa Clara County appoint a mediator. The mediation meeting shall not exceed one (1) day of eight (8) hours. The parties may agree to extend the time allowed for mediation under this Lease.

(b) The costs of mediation shall be borne by the parties equally.

(c) Mediation under this Section is a condition precedent to filing an action in any court.

2.21 EMINENT DOMAIN

2.21.1 If the Property or any portion thereof is taken under the power of eminent domain by any public agency other than the City of Santa Clara or any agency thereof, the Redevelopment Agency of the City of Santa Clara or the Landlord, or sold by Landlord under the threat of the exercise of such power, this Lease shall terminate as of the date that the condemning Landlord takes possession of the Property. Awards shall be shared among Lessee and Landlord pro rata based on their respective interests in the Property.

2.21.2 Notwithstanding anything contained in this Section 2.21 to the contrary, any rights of the Landlord under this Section 2.21, including, without limitation, any right to terminate this Lease, shall be expressly subject to the rights of any Permitted Leasehold Mortgage, and the terms and conditions of any Permitted Leasehold Mortgage.

2.22 HAZARDOUS MATERIALS

2.22.1 Lessee shall not:

(a) Make, or permit to be made, any use of the Property, or any portion thereof, which emits, or permits the emission of dust, sweepings, dirt, cinders, fumes, or odors into the atmosphere, the ground, or any body of water, whether natural or artificial, in violation of applicable law; or

(b) Discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any liquid, solid, or gaseous matter, or any combination thereof, into the atmosphere, the ground, or any body of water, in violation of applicable law.

2.22.2 Lessee shall not use, store or dispose of on the Property any solid, liquid, or gaseous matter, or any combination thereof, which is, or may become, hazardous, toxic, or radioactive including, but not limited to, those materials listed in Sections 66680 through 66685 of Title 22 of the California Administrative Code, Division 4, Chapter 30 (as may be amended from time to time), in violation of applicable law (all of the foregoing collectively referred to herein as “**Hazardous Materials**”).

2.22.3 Lessee shall not keep any trash, garbage, waste, or other refuse on the Property except in sanitary containers and shall regularly and frequently remove the same from the Property. Lessee shall keep all incinerators, containers, and other equipment used for the storage or disposal of such matter in a clean and sanitary condition. Lessee shall surrender the Property at the expiration or termination of this Lease free of any Hazardous Materials or contamination caused by Lessee's activities, and free and clear of all environmental judgments, liens, or encumbrances and shall, at its own cost and expense, repair all damage and clean up or perform any remedial action necessary relating to any Hazardous Materials or contamination caused by Lessee's activities.

2.22.4 Lessee shall indemnify, defend, and hold Landlord harmless from and against (a) any and all claims, demands, judgments, damages, actions, causes of action, injuries, administrative orders, consent agreements and orders, liabilities, penalties, costs, and expenses of any kind whatsoever, including but not limited to claims arising out of loss of life, injury to persons, property, or business, or damage to natural resources, in connection with or arising out of any spills or discharges of Hazardous Materials in violation of applicable law, to the extent due to, contributed to, or caused by the activities of Lessee or parties in contractual relationship with Lessee (other than Landlord), or any of them, that occur during the term of this Lease, and (b) from all claims, demands, judgments, damages, actions, causes of action, injuries, administrative orders, consent agreements and orders, liabilities, penalties, costs, and expenses of any kind whatsoever, including but not limited to claims arising out of Lessee's failure to provide all information, make all submissions, and take all steps required by any Landlord under any Hazardous Materials laws or any other environmental law.

2.23 RIGHTS OF LEASEHOLD MORTGAGEES 2.23.1 DEFINITIONS

(a) For purposes of this Lease, the term "mortgage" shall include whatever security instruments are used in the locale of the Property, such as, without limitation, deeds of trust, security deeds, and conditional deeds. The term "mortgage" shall also include any instruments required in connection with a sale-leaseback transaction. The term "mortgagee" shall include the holder of the secured position under each of the foregoing types of instruments, including but not limited to the beneficiary under a deed of trust, the secured party under a security agreement and the lessor in a sale-leaseback transaction.

(b) For purposes of this Lease, the term "**Leasehold Mortgage**" means a conveyance of a security interest in this Lease and all of Lessee's interests in the Property (collectively referred to as "**Lessee's Leasehold Interests**") to a lender (a "**Leasehold Mortgagee**") or the conveyance of Lessee's Leasehold Interests to the Leasehold Mortgagee or its assignee in connection with a foreclosure or a deed in lieu of foreclosure of such loan.

(c) For purposes of this Lease, the terms "**Permitted Leasehold Mortgage**" and "**Permitted Leasehold Mortgagee**" shall mean, respectively, a Leasehold Mortgage and a Leasehold Mortgagee satisfying all of the conditions set forth in Section 2.23.2.

(d) "**Development Costs**" means costs incurred by Lessee for the development of the Property and construction of the Improvements to the extent set forth as "**Total Development Costs**" in the approved Project Budget, which shall be subject to

adjustment following Completion (the “**Adjusted Project Budget**”) to reflect the final Development Costs set forth in the Cost Certification prepared and submitted to Landlord pursuant to the Affordable Housing Agreement.

(e) “**Developer Equity**” means all sources of funds used by Lessee to pay Development Costs except any loan secured by a Permitted Leasehold Mortgage (each, a “**Permitted Leasehold Mortgage Loan**”) or any other loan of funds secured by a deed of trust or other security interest in the Property.

2.23.2 RIGHT TO ENCUMBER. At any time and from time to time during the Term, notwithstanding anything contained in this Lease to the contrary, including, without limitation, Section 2.14 above, Lessee shall have the right to enter into a Leasehold Mortgage upon and subject to each and all of the following terms and conditions, subject to the reasonable consent of Landlord (which consent Landlord shall grant so long as the proposed Leasehold Mortgage satisfies all of the following conditions, which conditions shall apply to the Permitted Leasehold Mortgage securing the Construction Loan (as defined in the Affordable Housing Agreement), the Permitted Leasehold Mortgage securing the initial Permanent Loan (as defined in the Affordable Housing Agreement):

(a) The Leasehold Mortgage shall cover all of Lessee's interest in the Lease, the Property and the Improvements and shall cover no interest in any other real property other than Lessee's.

(b) The Leasehold Mortgage shall be without subordination of the fee simple title of the Property.

(c) No such Leasehold Mortgage shall be binding upon Landlord in the enforcement of its rights and remedies herein, unless and until Lessee (or a Leasehold Mortgagee) delivers or causes to be delivered to Landlord a certified copy of the fully executed original Leasehold Mortgage bearing the date and recording information and a certified copy of the original note secured by the Leasehold Mortgage, together with written notice of the address of the Leasehold Mortgagee to which notices may be sent. In the event of an assignment of such Leasehold Mortgage, such assignment shall not be binding upon Landlord unless and until a certified copy thereof, bearing the date and recording information together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to Landlord.

(d) No Leasehold Mortgage permitted by this Lease shall cover more than one indebtedness; that is, there shall be no cross-collateralization permitted.

(e) A Leasehold Mortgage is to be originated only by a Qualified Lender. For the purposes hereof, the term “Qualified Lender” shall consist of:

(i) the mortgagee of any purchase money financing of a Permitted Transfer or other Transfer approved by Landlord; or

(ii) any one or a combination of the following lending institutions authorized under applicable California or federal law to make mortgage loans and not

under any order or judgment of any court or administrative authority restricting or impairing its operation as a lender: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association; or

(iii) any company engaged in the ordinary course of business as a lender with a net worth or assets of not less than \$50,000,000, which is duly licensed or registered (if legally required) with any regulatory agency having jurisdiction over its operation, and is not under any order or judgment of any court or administrative authority restricting or impairing its operation as a lender, including, without limitation, the following: a real estate investment trust; an educational institution; a pension, retirement or welfare fund; a charity; or an endowment fund or foundation authorized to make loans in the State of California; or

(iv) any partner of Lessee's partnership, as provided in the Affordable Housing Agreement.

Landlord acknowledges that the identity and nature of lending institutions change over time, and agrees that Landlord's approval of any proposed mortgage lender that is not a "Qualified Lender" as defined in this paragraph 2.23.2 shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained in this Lease to the contrary, Landlord expressly acknowledges that the holders of the Construction Loan and the Initial Permanent Loan (the "Construction Lender" and the "Initial Permanent Lender" as defined in the Affordable Housing Agreement, respectively) are Qualified Lenders and Permitted Leasehold Mortgagees for all purposes of this Lease.

(f) All rights acquired by the Leasehold Mortgagee under the Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder. Except as otherwise set forth in this Lease, Landlord shall not be deemed to waive any covenants, conditions and restrictions contained in this Lease by reason of Lessee's grant of a Leasehold Mortgage. Notwithstanding any foreclosure of any Leasehold Mortgage, Lessee shall remain liable for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Lessee.

(g) No extension, nor modification, change or amendment to a material financing term of a Leasehold Mortgage shall be effective, or binding upon Landlord, unless and until approved by Landlord, which approval shall be granted so long as such extension or material modification, change or amendment satisfies the applicable requirements of paragraphs (a) through (f), above.

2.23.3 REFINANCING LOAN.

(a) For purposes of this Section 2.23.3, the term "**Refinancing**" means the repayment of all or part of the Initial Permanent Loan, or any subsequent Permanent Loan and/or Developer Equity, using the proceeds of a Permitted Leasehold Mortgage Loan which shall be referred to as a "**Refinancing Loan.**"

(b) In addition to the requirements set forth in Section 2.23.2, the following shall apply to any Permitted Leasehold Mortgage that secures a Refinancing Loan: At

any time and from time to time during the Term, notwithstanding anything contained in this Lease to the contrary, including, without limitation, Section 2.14 above, Lessee shall have the right to enter into a Leasehold Mortgage for the purpose of securing a Refinancing Loan, upon and subject to each and all of the following terms and conditions, subject to the reasonable consent of Landlord, which consent Landlord shall grant so long as the proposed Refinancing Loan satisfies all of the following conditions:

(i) the term of the proposed Refinancing Loan shall extend no longer than the Term of this Lease;

(ii) any subordination agreement to be entered into by and among the Landlord, Lessee and the maker of the Refinancing Loan shall contain such cure rights and other similar provisions as the Landlord may reasonably require;

(iii) no event of default shall be continuing under any of the City Loan Documents (as defined in the Loan Agreement) or any other loan secured by the Project; and

(iv) the proposed Refinancing Loan shall be made pursuant to an arm's length transaction with a maker unrelated to the Lessee on commercially available terms.

2.23.4 LANDLORD'S RIGHT TO CURE DEFAULTS. In the event of a default or breach by Lessee of any Permitted Leasehold Mortgage, Landlord shall have the right to cure the default pursuant to the terms of the subordination agreement between the Landlord and the Permitted Leasehold Mortgagee. In such event, Landlord shall be entitled to reimbursement by Lessee of all costs and expenses incurred by Landlord in curing the default, with interest at the highest rate permitted by law, as additional rent (collectively, "Landlord's Cure Payments"), provided in the event of a subsequent foreclosure of a Permitted Leasehold Mortgage, the party acquiring the Lessee's Leasehold Interests shall not be obligated to pay Landlord any of Landlord's Cure Payments. Notwithstanding any provision of this Lease to the contrary, this Section 2.23.4 shall be subject to and superseded by the provisions of any subordination agreement executed by Landlord and any Permitted Leasehold Mortgagee.

2.23.5 RIGHTS OF PERMITTED LEASEHOLD MORTGAGEE: If Lessee and/or Lessee's successors and assigns (including, but not limited to, any sublessee of Lessee) shall mortgage its interest in this Lease and the Lessee's Leasehold Interests, or any part or parts thereof as permitted by this Section 2.23, the following provisions shall apply:

(a) No Amendment. There shall be no amendment, cancellation, termination, surrender or modification of this Lease either by unilateral action of Landlord or Lessee, or by joint action of Landlord and Lessee without the prior consent in writing of any Permitted Leasehold Mortgagee.

(b) Right to Notice of Default. Landlord shall, upon serving Lessee with any notice of default, simultaneously serve a copy of the notice of default upon any Permitted Leasehold Mortgagee.

(c) Right to Cure. Any Permitted Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. Any Permitted Leasehold Mortgagee and its agents and contractors shall have full access to the Property for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Permitted Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Lessee.

(d) Additional Cure Period. Anything contained in this Lease notwithstanding, if any default shall occur which, pursuant to any provision of this Lease, purportedly entitles Landlord to terminate this Lease, Landlord shall not be entitled to terminate this Lease as to any Permitted Leasehold Mortgagee, nor to disturb the right of possession of any subtenant of Lessee, and the notice shall be rendered void as to such parties, if the Permitted Leasehold Mortgagee, within sixty (60) days after expiration of the period within which Lessee was permitted to cure the default (but in no event later than ninety (90) days after receipt by the Leasehold Mortgagee of the notice of default referred to in paragraph 2.23.5(b), above), shall both:

(i) either (1) cure the default if the same can be cured by the expenditure of money, or (2) if the default or breach is not so curable, commence, or cause any trustee under the relevant Permitted Leasehold Mortgage to commence, and thereafter to diligently pursue to completion, a cure of such default, including, without limitation, a foreclosure of the relevant Permitted Leasehold Mortgage; and

(ii) perform or cause the performance of all of the covenants and conditions of this Lease requiring the expenditure of money by Lessee until such time as the leasehold shall be sold upon foreclosure pursuant to the relevant Permitted Leasehold Mortgage, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure or by deed or assignment in lieu of foreclosure.

(e) Condition of Termination. Any right of Landlord to terminate this Lease as the result of the occurrence of any default shall be subject to, and conditioned upon: (1) Landlord having first given to each Permitted Leasehold Mortgagee written notice of the default as required under Section 2.23.5(b) above; (2) each Permitted Leasehold Mortgagee having failed to remedy such default or acquire Lessee's leasehold estate hereunder or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 2.23.5.(d), above; and (3) the terms of Section 2.23.7 below.

(f) Suspension of Cure Period. If any Permitted Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, the times specified in paragraph (d) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, so long as

the Permitted Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently those monetary obligations as and when the same fall due, subject to any applicable notice and grace periods.

(g) Loss Payable Endorsement. Landlord and Lessee agree that the name of the Permitted Leasehold Mortgage shall, at its request, be added to the “Loss Payable Endorsement” of any and all insurance policies required to be carried by Lessee under this Lease, and any insurance proceeds are to be applied in the manner specified in the relevant Permitted Leasehold Mortgage.

(h) No Consent Required to Foreclosure. Notwithstanding anything contained in this Lease to the contrary, foreclosure of any Permitted Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Leasehold Mortgage, or any conveyance of the Lessee's Leasehold Interests hereunder from Lessee to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize in writing the purchaser or other transferee referred to in the preceding sentence in connection therewith as the Lessee hereunder. Further, following such foreclosure or conveyance, any assignment or subleasing by the purchaser or other transferee shall not require the consent of Landlord, despite any other provisions of this Lease to the contrary.

(i) Proceeds of Insurance and Condemnation. The proceeds from any insurance policies or arising from a condemnation award to Lessee shall be paid to and held by the Permitted Leasehold Mortgagee of highest priority and distributed pursuant to the provisions of the relevant Permitted Leasehold Mortgage, and the Permitted Leasehold Mortgagee may reserve the right to apply to the mortgagee debt (in the order of priority) all, or any part, of the proceeds not used to repair or restore the Property and the Improvements.

(j) Notice of Proceedings. The parties hereto shall give to any Permitted Leasehold Mortgagee notice of any arbitration proceedings or condemnation proceedings involving Lessee's Leasehold Interests, or of any pending adjustment of insurance claims, and any Permitted Leasehold Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Permitted Leasehold Mortgagee shall not elect to intervene or become a party to the proceedings, that Permitted Leasehold Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(k) Further Protections. Landlord and Lessee shall cooperate in including in this Lease, by suitable amendment from time to time, any provision which may be reasonably requested by any proposed Permitted Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 2.23 and allowing such Permitted Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease. Landlord and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording

purposes) any agreement necessary to effect any such amendment; provided, however, that no such amendment shall in any way affect the Term or rent or Option under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(l) Additional Agreement. Landlord shall, upon request, execute, acknowledge and deliver to a Permitted Leasehold Mortgagee, an agreement prepared by such Permitted Leasehold Mortgagee and reviewed by Landlord at the sole cost and expense of Lessee, in form satisfactory to such Permitted Leasehold Mortgagee, among Landlord, Lessee and the Permitted Leasehold Mortgagee, agreeing to all of the provisions of this Lease.

2.23.6 NOTICE. If Lessee and/or Lessee's successors and assigns shall mortgage its interest in this Lease or the Lessee's Leasehold Interests, or any part or parts thereof, Lessee shall send or cause to be sent to Landlord a true copy thereof, together with written notice specifying the name and address of the Leasehold Mortgagee(s) and the pertinent recording data with respect to such Leasehold Mortgage(s).

2.23.7 NEW LEASE. Landlord agrees that in the event of termination of this Lease by reason of any default by Lessee, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Lessee or Lessee's property or any other reason whatsoever, Landlord if requested by any Permitted Leasehold Mortgagee will enter into a new lease of the Property, with the Permitted Leasehold Mortgagee requesting a new lease or its designee, for the remainder of the Term, effective as of the date of such termination, subject to the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(i) The Permitted Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the Permitted Leasehold Mortgagee receives notice of the termination;

(ii) The Permitted Leasehold Mortgagee shall perform and observe all covenants contained in the terminated Lease on Lessee's part to be performed after the date of the new Lease;

(iii) The lessee under the new lease shall have the same right, title and interest in and to the buildings and improvements on the Property as Lessee had under the terminated Lease immediately prior to its termination; and

(iv) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 2.23.7 shall enjoy the same priority in time as this Lease over any mortgage, deed of trust, or other lien, charge, or encumbrance on the Property.

(v) Any new lease made pursuant to this Section 2.23.7 shall be accompanied by a conveyance from Landlord to the new lessee of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Landlord) for a term of years equal to the term of the new lease, subject to the reversion in favor of Landlord upon expiration or sooner termination of the new lease.

(vi) Nothing herein contained shall obligate or require any Permitted Leasehold Mortgagee to enter into a new lease pursuant to this Section 2.23.7, nor to cure any default of Lessee referred to above.

(vii) If a Permitted Leasehold Mortgagee shall elect to demand a new lease, Landlord agrees, at the request of, on behalf of and at the expense of the Permitted Leasehold Mortgagee, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to evict, oust or remove the Lessee from the Property, but not any subtenant of Lessee actually occupying the Property, or any part thereof.

(viii) Unless and until Landlord has received notice from any Permitted Leasehold Mortgagee that the Permitted Leasehold Mortgagee elects not to demand a new lease as provided in this Section 2.23.7, or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases, nor enter into any new subleases hereunder without the prior written consent of the Permitted Leasehold Mortgagee.

2.23.8 LENDER'S LIABILITY. In the event any Permitted Leasehold Mortgagee becomes the Lessee under this Lease or becomes a lessee under any new lease obtained pursuant to Section 2.23.7(a) above, the Permitted Leasehold Mortgagee shall only be liable for the obligations of Lessee under this Lease or a new lease first accruing or arising after the time that the Permitted Leasehold Mortgagee first becomes lessee under this Lease or such new lease.

2.23.9 APPROVAL OF MODIFICATIONS. Landlord (through its Executive Director or designee) shall approve reasonable modifications to the terms of this Lease which are reasonably requested by a proposed Leasehold Mortgagee as a condition of financing contemplated by the Affordable Housing Agreement and this Lease, and which the Executive Director or designee determines, in his sole discretion, will not adversely affect Landlord's rights.

2.24 RESTRICTION ON ENCUMBRANCE BY LANDLORD

2.24.1 Landlord shall not mortgage or otherwise encumber its interest in the Property (referred to as a "**Fee Mortgage**") without the prior written consent of Lessee, which Lessee shall not unreasonably withhold, condition or delay. Any Fee Mortgage, including amendments thereto, shall be subordinated to this Lease and shall, in the event of a foreclosure of the Fee Mortgage, be obligated to recognize the rights of Lessee under this Lease, and the holder of any Fee Mortgage shall be obligated to execute, acknowledge and deliver to Lessee a statement confirming such subordination from time-to-time.

2.24.2 Prior to obtaining any loan secured by a Fee Mortgage, Landlord shall notify Lessee in writing ("**Landlord's Notice**") and provide Lessee an opportunity to make the loan to Landlord, as provided in this Section 2.24.2. Landlord's Notice shall contain the following: (i) a statement that Landlord has obtained from a lender a bona fide statement of interest in making a Fee Mortgage loan to Landlord (or a comparable contingent commitment from a lender, underwriter or other entity relating to any proposed financing to be secured by a

Fee Mortgage, as may be appropriate to the particular form of the proposed financing) ; (ii) the terms of the proposed Fee Mortgage loan (“**Proposed Terms**”); and (iii) a reasonable time period, not less than thirty (30) days after Landlord's Notice (the “**Offer Period**”), for Lessee to offer, in writing, to make the loan to Landlord. If, prior to the end of the Offer Period, Lessee submits to Landlord a written offer to make a loan on terms that are essentially the same as, or better than, the Proposed Terms, Landlord shall not obtain the Fee Mortgage loan described in Landlord's Notice. In that event, subject to all requisite approvals by Landlord's governing body, Landlord shall have the right, but not the obligation, to accept Lessee's offer. If, prior to the end of the Offer Period, Lessee fails to submit a written offer to make a loan on terms that are essentially the same as, or better than, the Proposed Terms, Landlord shall have the right to obtain the proposed Fee Mortgage loan.

2.24.3 THE PROVISIONS OF THIS LEASE DO NOT GIVE TO LESSEE OR ANY PERSON WHATSOEVER OTHER THAN LANDLORD THE RIGHT TO MORTGAGE, HYPOTHECATE OR OTHERWISE TO ENCUMBER OR TO CAUSE ANY LIENS TO BE PLACED AGAINST THE FREEHOLD ESTATE OF LANDLORD, NOR SHALL SAID PROVISIONS BE CONSTRUED AS RESULTING IN A SUBORDINATION IN WHOLE OR IN PART OF THE FREEHOLD ESTATE OF LANDLORD OR LANDLORD'S RIGHT TO RECEIVE RENT TO ANY INDEBTEDNESS OF LESSEE.

2.25 QUIET ENJOYMENT

Absent an uncured default by Lessee, Landlord agrees not to disturb the possession, interest or quiet enjoyment of Lessee in the Property for any reason, or in a manner which would materially adversely affect any Permitted Leasehold Mortgage.

2.26 GENERAL PROVISIONS

2.26.1 The waiver by either party of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach.

2.26.2 All notices and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing. All notices and demands shall be sent by United States Mail, postage prepaid, to the address for each party set forth in Article 1 of this agreement. All notices shall be deemed to be served upon personal delivery or two (2) days after mailing in the manner required by this Section.

2.26.3 Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

2.26.4 The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

2.26.5 In addition to specific provisions of this Lease, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, floods, earthquakes, fires, casualties, Acts of God, epidemics, quarantine restrictions, governmental restrictions or priority, unusually severe weather, inability to secure

necessary labor, materials or tools, acts of the other party, acts or failure to act of the City or any other public or governmental Landlord or entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. 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) days of knowledge of the commencement of the cause. Times of performance under this Lease may also be extended in writing by mutual agreement of the parties.

2.26.6 If any action or proceeding is brought by either party against the other under this Lease, the prevailing party shall be entitled to recover all costs and expenses, including the fees of its attorney in such action or proceeding. This provision shall also apply to any post-judgment action by either party, including without limitation efforts to enforce a judgment.

2.26.7 Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

2.26.8 No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

2.26.9 This Lease shall be governed by the laws of the State of California. Proper venue for any action shall be in Santa Clara County, California.

2.26.10 Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, or any other relationship between the parties hereto, or cause Landlord to be responsible in any way for the debts or obligations of Lessee, or any other party.

2.26.11 This Lease, including any document or instrument incorporated herein by reference, contains a complete and final expression of the agreement between Landlord and Lessee, and there are no promises, representations, agreements, warranties, or inducements either express or implied other than as are set forth in this Lease. Any and all previous discussions or agreements between Landlord and Lessee with respect to the premises, whether oral or written, are superseded by this Lease.

2.26.12 No amendment, change, or addition to, or waiver of termination of, this Lease or any part hereof shall be valid unless in writing and signed by both Landlord and Lessee.

2.26.13 The provisions of this Lease shall be interpreted in a reasonable manner to effect the purpose and intent of the parties to this Lease.

2.26.14 Concurrently with the execution of this Lease, the Parties shall execute and record a Memorandum of Lease, substantially in the form attached to this Lease as Exhibit B.

2.26.15As and when required by the California Tax Credit Allocation Committee, the Landlord and Lessee shall execute the then current form of the California Tax Credit Allocation Committee Lease Rider Agreement.

Executed in Santa Clara, California, as of the date first set forth above.

[Signatures appear on next page.]

“LANDLORD”

[Signatures continue on next page.]

“LESSEE”

Exhibit “A”

LEGAL DESCRIPTION

Real Property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

[to be inserted]

Exhibit "B"

MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

MEMORANDUM OF LEASE

This Memorandum of Lease (this "**Memorandum**") is made as of _____, 2019, by and between the CITY OF SANTA CLARA ("**Landlord**") and _____, a California limited partnership ("**Lessee**"), who agree as follows:

1. Landlord hereby leases the real property described on Exhibit A attached hereto ("**Property**") to Lessee and Lessee hereby accepts tenancy of the Property from Landlord for a term (the "**Term**") commencing on the date that this Memorandum is recorded in the Official Records of the County of Santa Clara and shall continue for fifty-five (55) years after the issuance of the temporary certificate of occupancy for the Improvements (as defined therein), unless earlier terminated as provided in the Lease. Concurrently herewith, Landlord and Lessee have entered into that certain Lease Agreement (the "**Lease**") with respect to the Property.

2. The provisions of the Lease to be performed by Lessee, whether affirmative or negative in nature, are intended to and shall bind Lessee and its successors and assigns at any time, and shall inure to the benefit of Landlord and its successors and assigns.

3. The provisions of the Lease to be performed by Landlord, whether affirmative or negative in nature, are intended to and shall bind Landlord and its successors and assigns at any time, and shall inure to the benefit of Lessee and its successors and assigns.

4. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Lease.

5. Reference is hereby made to the entire Lease for any and all purposes. A true copy of the Lease is on file in the office of the Landlord, at its offices located at 1500 Warburton Avenue, Santa Clara, California 95050.

“LANDLORD”

[Signatures continue on next page.]

“LESSEE”

Exhibit “A”

LEGAL DESCRIPTION

That certain Real Property in the City of Santa Clara, County of Santa Clara, State of California,
described as follows:

Exhibit “C”

INSURANCE REQUIRMENTS

[Behind this Page.]

LOAN AGREEMENT

(SENIOR AFFORDABLE HOUSING PROJECT)

by and between

THE CITY OF SANTA CLARA,

and

_____,

Borrower

LOAN AGREEMENT

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into by and between THE CITY OF SANTA CLARA (“**City**”) and _____ (“**Borrower**”), as of _____. City and Borrower agree as follows:

PART 1. SUBJECT OF AGREEMENT

Section 1.1 Purpose of Agreement

a. Concurrently with the execution of this Agreement, (I) City and Borrower have entered into that certain Ground Lease (the “**Lease**”) pursuant to which City is leasing to Borrower an approximately 1.60 acre parcel (the “**Affordable Property**”) described on Attachment No. 1-A hereto for the construction and operation of 165 units of housing to 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;] [NOTE: TO BE UPDATED AS NECESSARY PRIOR TO CLOSING] 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; and (II) Borrower has acquired from City an approximately 1.16 acre parcel (the “**Agrihood Property**”; together with Borrower’s interest in the Affordable Property, the “**Property**”) described on Attachment No. 1-B hereto for the construction and operation of open, common and agricultural space and certain other improvements described in the Scope of Development (collectively, the “**Agrihood**”). The foregoing units to be developed on the Property, excluding any Management Units, are referred to herein as the “**Affordable Units**”. Each Affordable Unit is to 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. Borrower’s leasehold interest in the Affordable Property pursuant to the Lease, fee interest in the Agrihood Property and fee interest in the improvements to be constructed on the Property (including the Agrihood, Affordable Units and the Management Units), together with the development thereof in accordance with this Agreement, is referred to herein as the “**Project**”.

b. City is concurrently herewith making a loan to Borrower in the original principal amount of Fifteen Million Seven Hundred Thousand Dollars (\$15,700,000) (the “**City Loan**”) to provide financial assistance for the development of the Project. The City Loan is evidenced by that certain Promissory Note in the original principal amount of the City Loan dated as of even date herewith made by Borrower in favor of City (the “**City Note**”) and secured by that certain Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Borrower is the Trustor, Chicago Title Company is the Trustee, and City is the Beneficiary, dated as of the date hereof (the “**City Deed of Trust**”) and encumbering the Project.

c. City and Borrower have agreed to enter into this Agreement to memorialize their understanding regarding their respective rights and obligations in respect of the City Loan and the construction and operation of the Project.

Section 1.2 Definitions

For purposes of 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.

“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” shall mean (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term “control” as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. For purposes of this definition, any general partner shall be considered an “Affiliate” of Borrower.

“Affordable Rent” means an amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum rent to be charged by Borrower 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 Property” means the real property described in Section 1.1(a) hereof.

“Agrihood Property” means the real property described in Section 1.1(a) hereof.

“AMI” or “Area-wide Median Income” means the median family income figures and standards (adjusted for actual Household size) utilized by TCAC.

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

“Certificate of Occupancy” shall mean a temporary certificate of occupancy issued by the City for the Project.

“Change Order” means any individual change order which results in a change made to the Construction Contract or the Plans and Specifications.

“City” shall mean the City of Santa Clara, California

“City Assignment of Agreements” shall mean the Assignment of Agreements between Borrower and City dated as of the date hereof.

“City Assignment of Rents and Leases” shall mean the Assignment of Rents and Leases between Borrower and City dated as of the date hereof.

“City Deed of Trust” shall mean the Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Borrower is the Trustor, Chicago Title Company is The Trustee, and City is the Beneficiary, which secures the City Loan, dated as of the date hereof.

“City Environmental Indemnity” shall the Environmental Indemnity executed by Borrower, and _____ for the benefit of the City, dated as of the date hereof.

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

“City Guaranty” shall mean the Completion Guaranty made by _____ for the benefit of the City, dated as of the date hereof.

“City Loan” shall mean the loan of from the City to Borrower, in the amount and pursuant to the terms and conditions described in this Agreement, secured by the City Deed of Trust and having a lien on the Property that is junior in priority to the lien of the Senior Loan Deed of Trust.

“City Loan Documents” shall mean this Agreement, the City Promissory Note, the City Deed of Trust, the City Assignment of Rents and Leases, the City Assignment of Agreements, the City Guaranty, the City Environmental Indemnity, the City Regulatory Agreement, any other agreement or document evidencing or securing the City Loan, and any amendments and modifications thereto.

“City Note” shall mean the Promissory Note, evidencing the City Loan, made by Borrower and payable to City, dated as of the date hereof.

“City Regulatory Agreement” means the Agreement Containing Covenants between City and Borrower made as of the date hereof and recorded against the Project.

“Closing Requirements” shall mean the requirements attached to this Agreement as Attachment No. 6 which are incorporated herein by this reference.

“Completion” shall mean the point in time when all of the following shall have occurred: (1) issuance of a Certificate of Occupancy by the City of Santa Clara; (2) recordation of a Notice of Completion by Borrower or its contractor; (3) certification by the project architect that construction of the Improvements as provided in the (with the exception of minor “punchlist” items) has been completed in a good and workmanlike manner and substantially in accordance with the Scope of Development; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic’s liens that have been recorded or stop notices that have been delivered; and (5) the City shall have been issued a CLTA 101 endorsement (or an alternative endorsement reasonably acceptable to the City) to its policy of title insurance.

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

“Construction Loan” means the loan for the construction of the Project made to Borrower from _____ (**“Construction Lender”**), secured by the Construction Loan Deed of Trust.

“Construction Loan Deed of Trust” shall mean the leasehold deed of trust securing the Construction Loan that is first in priority.

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

“Construction Period” shall mean the period of time commencing upon the date hereof and ending upon the Conversion.

“Conversion” shall mean the point in time that both (a) either (i) all of the conditions precedent to the funding of the Permanent Loan have been satisfied and the Construction Loan has been repaid in full, as evidenced by the recording against the leasehold of the Property of a reconveyance of the Construction Loan Deed of Trust or (ii) the Construction Loan is converted to the Permanent Loan pursuant to the terms of the Construction Loan Documents and the Permanent Loan Documents, and (b) the Conversion Requirements set forth on Attachment No. 7 are satisfied.

“Conversion Requirements” shall mean the requirements attached to this Agreement as Attachment No. 7 which are incorporated herein by this reference.

“County” means Santa Clara County.

“County Loan” means that certain loan from County to Borrower in the amount of \$.

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

“Disbursement Agreement” shall mean the Disbursement Agreement by and among the City, Borrower and Construction Lender dated as of the date hereof.

“Draw Request” means a request for disbursement of Construction Loan funds.

“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 Borrower for the development and construction of the 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 Borrower for Eligible Project Costs must not exceed reasonable and customary market rates.

“Environmental Laws” shall have the meaning set forth in the Environmental Indemnity.

“Force Majeure” or **“Force Majeure Event”** shall mean the following events, provided that they actually delay and interfere with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such interference: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; 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 approvals for the Project, or any element thereof, or any portion thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of any Governmental Authority (except acts or failure to act of the City shall not excuse performance by the City); the imposition of any applicable moratorium by a Governmental Authority; or any other causes which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Event unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event.

“Force Majeure Delay” shall mean any delay in taking any action required by this Agreement, proximately caused by the occurrence of any Force Majeure Event.

“Governmental Approvals” shall mean and include 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 Governmental Authority in order to commence and complete the construction of the Project.

“Governmental Authority” means the United States, the State of California, the County of Santa Clara, the City of Santa Clara or any other political subdivision in which the Property is located, and any court or political subdivision, City or instrumentality having jurisdiction over the Property.

“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.

“Hazardous Substances” shall have the meaning set forth in the Environmental Indemnity.

“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 to be constructed on, under, or over the Property pursuant to the Scope of Development and in accordance herewith, including, without limitation, the Affordable Units and the Agrihood.

“Investor Limited Partner” shall mean _____, or any other Person who will be an investor limited partner in Borrower’s limited partnership and who will purchase the Low Income Housing Tax Credits and own a 99.99% interest in the Borrower.

“Lease” shall mean the Ground Lease for the Property between the City, as lessor, and Borrower, as lessee, dated as of the date hereof.

“Legal Description” shall mean the legal description of the Property attached to this Agreement as Attachment No. 1-A and Attachment No. 1-B, respectively, which is incorporated herein by this reference.

“Limited Partnership” shall mean the single purpose entity referred to herein as “Borrower”, formed for the ownership, development and operation of the Project.

“Limited Partnership Agreement” shall mean the agreement governing the Limited Partnership and shall include the Limited Partnership Agreement as amended and restated on the admission of the Investor Limited Partner.

“Low Income Housing Tax Credits” shall mean tax credits authorized by the Tax Reform Act of 1986 and governed by Section 42 of the Internal Revenue Code.

“Management Agreement” means a written agreement between the Borrower and the Property Manager as described in Section 5.3.

“Management Plan” means the plan for the management of the Project.

“Management Unit(s)” is defined in Section 1.1(a).

“Memorandum of Lease” shall mean the memorandum evidencing the Lease, between the City, as lessor, and Borrower, as lessee, dated as of the date hereof, and to be recorded in the Official Records.

“Operating Budget” means the operating budget for the Project prepared in accordance with the City Regulatory Agreement.

“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 in accordance with the terms and conditions of the Lease (**“Permanent Lender”**) and the Project Pro Forma following Conversion, secured by the Permanent Loan Deed of Trust.

“Permanent Loan Deed of Trust” shall mean the leasehold deed of trust securing the Permanent Loan that is first in priority.

“Permanent Period” shall mean the period of time from and after the repayment or conversion of the Construction Loan.

“Permanent Pro Forma” means a revised Project Pro Forma as of the date of the Conversion.

“Permitted Transfer” means any of the following:

a. An assignment of this Agreement and all of Borrower’s interests in the Property to an Affiliate;

b. A conveyance of a security interest in the Property or any portion thereof or interest therein or interest in the Borrower in connection with any Senior Loan and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith;

c. The inclusion of equity participation in the Borrower by addition of limited partners to Borrower’s partnership or similar mechanism, and any transfers of limited partnership interests in Borrower’s partnership;

- d. The lease for occupancy of all or any part of the Improvements on the Property;
- e. The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement;
- f. The withdrawal, removal and/or replacement of a general partner of Borrower pursuant to the terms of the Borrower's partnership agreement, provided that any required substitute general partner is reasonably acceptable to City and is selected with reasonable promptness. The Investor Limited Partner or an Affiliate thereof is an acceptable successor general partner of Borrower;
- g. the assignment or replacement of the original managing general partner in the Borrower with a nonprofit public benefit corporation or Affiliate thereof, provided that any new general partner is reasonably acceptable to City;
- h. The sale, transfer or pledge of any limited partnership interest in Borrower or of any partnership interest in the Investor Limited Partner;
- i. A Refinancing Loan in accordance with Section 2.23.3 of the Lease.

"Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

"Plans and Specifications" means any and all plans, drawings, studies, reports and related documents concerning the construction of the Project submitted by Borrower to City, and approved by City, including, without limitation, all architectural and engineering plans, and all approved amendments, modifications, supplements, general conditions and addenda thereto.

"Project Budget" shall mean the schedule of sources and uses attached to this Agreement as Attachment No. 5.

"Project Pro Forma" means the financial information to be prepared by Borrower, and any updates and amendments thereto, including without limitation, the Construction Budget, estimated sources and uses of financing, and the Project's operating budget and reasonably approved by the City.

"Property" means the real property described in Section 1.1(a) hereof.

"Property Manager" means a property manager engaged by Borrower to manage the Project.

"Qualified Tenant(s)" means a Household who qualifies as a 30%, 40%, 50%, 60%, 80% and 120% AMI Household, as applicable.

"Release of Construction Covenants" shall mean the certificate to be issued by the City in accordance with Section 3.25 of this Agreement.

"Rent Schedule" means the schedule calculating the Affordable Rent for the Project.

“Restricted Period” shall mean the period beginning on the date of the Conversion and continuing until the date that is fifty-five (55) years after the Conversion.

“Schedule of Performance” shall mean the document attached to this Agreement as Attachment No. 2 which is incorporated herein by this reference.

“Scope of Development” shall mean the document attached to this Agreement as Attachment No. 3 which is incorporated herein by this reference. Describing the construction and development of the Affordable Units and the Agrihood.

“Senior Lender” shall mean the maker of any Senior Loan, any construction lender, credit enhancer or construction period guaranty facility, including but not limited to the Construction Lender and the Permanent Lender.

“Senior Loan” shall mean, during the Construction Period, the Construction Loan, and during the Permanent Period, the Permanent Loan and any loan in the Project Pro Forma with an actual principal amount in excess of the City Loan.

“Senior Loan Documents” shall mean, as applicable, the Construction Loan Deed of Trust, the Permanent Loan Deed of Trust, loan agreements, promissory notes, financing statements, guaranties, security agreements, assignments, and similar documents and instruments to be executed by Borrower in connection with the Senior Loans.

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

“State Development Agreement” means the Development Agreement recorded against the Property on July 19, 2007 as Document Number 19519315 of the Official Records.

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

“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.

Section 1.3 The Property

The "Property" is that property owned by City and leased to Borrower pursuant to the Lease, as described in the "Legal Description of the Property" (attached hereto as Attachment No. 1-A and Attachment No. 1-B).

Section 1.4 City

City is a California municipal corporation existing under the laws of the State of California. The address of the City for purposes of receiving notices pursuant to this Agreement shall be:

To the City: Housing & Community Services Division
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Division 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

"City" as used in this Agreement includes the any assignee or successor to the rights, powers and responsibilities of City hereunder.

Section 1.5 Borrower

Borrower is _____, whose general partner is _____, and whose managing general partner is _____. The address of Borrower for purposes of receiving notices pursuant to this Agreement is as follows:

[_____]
470 S. Market Street
San Jose, California 95113
Attention: Christopher Neale

With a copy to:

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

With a copy to:

Whenever the term “Borrower” is used herein, such term shall mean and include: (1) the Borrower as of the date hereof; and (2) any assignee of or successor to its rights, powers and responsibilities approved by the City or permitted by this Agreement.

Section 1.6 Assignments and Transfers

The qualifications and identity of the Borrower are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with the Borrower. No voluntary or involuntary successor in interest of the Borrower shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Except for Permitted Transfers, the Borrower shall not assign all or any part of this Agreement without the prior written approval of the City. The City agrees to reasonably give such approval if in the reasonable determination of the City, the proposed assignee is comparable in all material respects (including experience, character and financial capability) to the Borrower. 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 Borrower under this Agreement.

For the reasons cited above, the Borrower represents and agrees for itself and any successor in interest that, except for Permitted Transfers, without the prior written approval of the City, which shall not be unreasonably withheld, there shall be no cumulative change in ownership interest of any general partner of greater than 49%, or with respect to the identity of the parties in control of the Borrower or the degree thereof, by any method or means.

The Borrower shall promptly notify the City of any and all changes whatsoever in the identity of the parties in control of the Borrower or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

The Borrower shall not, except for Permitted Transfers, assign or attempt to assign this Agreement or any right herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property (referred to hereinafter as a “**Transfer**”), without prior written approval of the City, except as expressly permitted by this Agreement and the other City Loan Documents. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Any such proposed transferee shall have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the City, to fulfill the obligations undertaken in this Agreement by the Borrower. Any such proposed transferee, by instrument in writing satisfactory to the City and in a form recordable among the land records, for itself and its successors and assigns, and for the benefit of the City shall expressly assume all of the obligations of the

Borrower under this Agreement and agree to be subject to all conditions and restrictions applicable to the Borrower in this Agreement. There shall be submitted to the City for review all instruments and other legal documents proposed to affect any such transfer; and if approved by the City its approval shall be indicated to the Borrower in writing.

In the absence of specific written agreement by the City, no unauthorized Transfer, or approval thereof by the City, shall be deemed to relieve the Borrower or any other party from any obligations under this Agreement.

Notwithstanding this Section 1.6, Borrower shall have the right to make Permitted Transfers and execute deeds of trust and other instruments granting a security interest in the Property for the purposes of financing the Development Costs.

PART 2. CITY LOAN

Section 2.1 City Loan

City agrees to lend to the Borrower, and Borrower agrees to borrow from City, the City Loan. Concurrently with the execution of this Agreement, City and Borrower have executed and delivered the City Loan Documents.

Section 2.2 Disbursement

Upon satisfaction of the Closing Requirements, the City Loan shall be disbursed to Borrower in accordance with the Disbursement Agreement.

City shall have no obligation to disburse the City Loan proceeds after Conversion. If any the City Loan proceeds remain undisbursed at Conversion, the amount of the City Loan will be reduced.

Section 2.3 Retention

Borrower agrees that requests for disbursements from the City Loan shall be subject to a retention. The amount of the retention for the City Loan and the terms and conditions upon which the retained amounts of the City Loan will be disbursed to Borrower shall be the same as Borrower and the Construction Lender have agreed to for the retention for the Construction Loan.

Section 2.4 Subordination

City agrees that the City Loan shall be subordinate to the lien of each Senior Loan. City agrees to make such modifications to this Agreement, and to execute such estoppel certificates, as may reasonably be requested by a Senior Lender and the Investor Limited Partner, provided that such modifications or certificates are consistent with the purpose of this Agreement and do not materially adversely affect the receipt of any material benefit by City hereunder. The City shall execute such subordination agreements as may reasonably be requested by the Construction Lender and Permanent Lender.

Section 2.5 Construction Loan

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

Section 2.6 Change Orders

Borrower covenants and agrees that concurrently with its submission of any Change Order to the Construction Lender, Borrower shall submit a copy of such Change Order to the City. Furthermore, to the extent that the Construction Lender's approval of a Change Order is required pursuant to the Construction Loan Documents, then the City's approval of the Change Order shall be required too. The foregoing provisions in this Section 2.6 relating to Change Orders shall be superseded by any Disbursement Agreement that governs such matters, or if the City, in its sole and absolute discretion, elects to rely on the County for approval of Change Orders.

Section 2.7 Draw Requests

Concurrently with submission to any lender(s) of any draw request for funding of any construction costs relating to the Project (including all Draw Request submissions to the Construction Lender), Borrower shall submit such draw request and all supporting documentation customarily required with respect to such request to the City. The City shall be invited to attend all Draw Request meetings with respect to the Construction Loan.

The City's approval shall be required for any draw request with respect to the City Loan, and Borrower shall not proceed with any such draw request for City Loan proceeds until City's approval has been obtained; provided that, if the City fails to respond to such request for approval within ten (10) Business Days after the City's receipt of such request, provided that all required supporting documentation has been provided to the City, then such draw request shall be deemed to have been approved by the City. The City shall be permitted to withhold approval on future draw requests as a result of an uncured default in connection with a previously approved or disapproved draw request or any portion thereof.

If, commencing upon the date which is forty five (45) days after receipt of written notice of a default hereunder, unless (a) the City has agreed, in writing signed by the City Representative, on the amount of a holdback from such draw request necessary to address such default, or (b) Borrower has cured or commenced to cure such default to the reasonable satisfaction of the City Representative, Borrower agrees that it shall not submit further construction draw requests to any lender. The City agrees that, prior to the completion of construction, it shall provide Construction Lender with written notice of default hereunder concurrently with such notice being provided to City.

The foregoing provisions in this Section 2.7 relating to Draw Requests shall be superseded by any Disbursement Agreement that governs such matters, or if the City, in its sole and absolute discretion, elects to rely on the County for approval of Draw Requests.

Section 2.8 No Prepayment of Junior Debt

Borrower covenants and agrees that, unless and until all principal and interest outstanding under the City Loan are paid in full, Borrower shall not make any prepayment of amounts due on any debt secured by a lien junior in position to the City Deed of Trust. The foregoing shall not prohibit Borrower from making regularly scheduled payments of principal and interest on the any junior loan.

Section 2.9 No Pledging of City's Credit

Under no circumstances shall the Borrower have the authority or power to pledge the credit of the City or incur any obligation in the name of the City. Borrower shall save and hold harmless the City, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of the City's credit by the Borrower under this Agreement. Under no circumstances shall the City have the authority or power to pledge the credit of the Borrower or incur any obligation in the name of the Borrower. City shall save and hold harmless the Borrower, its partners and members for expenses arising out of any unauthorized pledges of the Borrower's credit by the City under this Agreement.

Section 2.10 Acknowledgement of City Contributions; Use of City Name or Logo

Borrower agrees, at its own cost and expense, to acknowledge the contributions of the City in information released to the public or interested parties regarding the Project, including but not limited to brochures and press releases. However, the Borrower shall not use the City's name or insignia in such information, or in any other publicity pertaining to the services rendered under this Agreement, in any magazine, trade paper, newspaper or other medium without first obtaining the express written consent of the City.

Section 2.11 Ground Breaking and Grand Openings

To insure proper protocol and recognition of the City staff and/or the City Council, Borrower shall cooperate with the City staff in the organization of any Project-related ground breaking, grand openings or any other such inaugural events/ceremonies sponsored by Borrower and celebrating the development which is the subject of this Agreement by providing the City staff with at least sixty (60) calendar days prior written notice of any such event.

PART 3. DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Approvals; Land Use Restrictions

It is the responsibility of the Borrower, without cost to City, to ensure that zoning of the Property and all applicable City land use requirements will be such as to permit development of the Property and construction of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. Nothing contained herein shall be deemed to entitle Borrower to any City of Santa Clara 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 Borrower, (b) supersede, nullify or amend any condition which may be imposed by the City of Santa Clara in connection with approval of the development described herein, (c) guarantee to Borrower or any other party any profits from the development of the Property, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864. Without cost to City, City shall provide appropriate technical assistance to Borrower in connection with Borrower's obtaining all necessary entitlements, permits and approvals for the construction of the Improvements.

Borrower shall construct the Project consistent with applicable Governmental Regulations, all applicable covenants, conditions and restrictions applicable to the Project, and all zoning, planning and design review requirements of the City and all permits and entitlements relating thereto.

Section 3.2 Permits and Entitlements

Prior to commencement of any work of improvement upon the Project, Borrower shall, at its own expense, secure or cause to be secured any and all permits, entitlements or approvals which may be required by the City in accordance with the Santa Clara City Code and land use entitlement process and by any other governmental entity with jurisdiction over the Project in

accordance with applicable Governmental Regulations. The execution of this Agreement does not constitute the granting of or a commitment to obtain or grant any required land use entitlements or approvals required by the City.

Section 3.3 Condition of the Property

City makes no representation or warranty, express or implied regarding any conditions of the Property. It shall be the sole responsibility of the Borrower, at the City's expense, to investigate and determine all conditions of the Property and its suitability for the uses to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the sole responsibility and obligation of the Borrower, without cost to City, to take such action as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

Borrower agrees to perform and be solely responsible for the clean-up of any Hazardous Substances on, in, under or within the Property, at the sole cost, risk and expense of Borrower, except to the extent that City had previous knowledge about such Hazardous Substances and failed to disclose such information to Borrower prior to the closing of the City Loan. Borrower shall defend, indemnify and hold harmless the City and its officers, agents, employees, contractors and attorneys from any claims, liability, injury, damages, costs and expenses (including, without limiting the generality of the foregoing, the cost of any required clean up of Hazardous Substances, and the cost of attorneys' fees) which may be sustained as the result of the presence or clean up of Hazardous Substances on, in, or under the Property, except to the extent City had previous knowledge about such Hazardous Substances and failed to disclose such information to Borrower prior to the closing of the City Loan.

Section 3.4 Scope of Development; Modification of Closing Requirements

The Property shall be developed in accordance with and within the limitations established in the Scope of Development attached to this Agreement as Attachment No. 3 and the permits issued by the City for the Project, and in accordance with all applicable Closing Requirements approved by the City. The Scope of Development shall not be modified or amended except with the prior written consent of the City. Borrower shall not modify the Closing Requirements, or any matter approved by the City pursuant to the Closing Requirements, without the prior written approval of the City. Notwithstanding the foregoing, written approval of the City (which shall not be unreasonably withheld, delayed or conditioned) shall be required for any of the following, and shall not be delegated under the Disbursement Agreement or to any other party:

- (a) Changes to the Plans and Specifications.
- (b) Changes to the design elements or physical appearance of the Project.
- (c) Changes to amenities designed for a senior population.
- (d) [City to confirm.]

Section 3.5 Design; Architectural Quality

Borrower acknowledges and understands that the materials, workmanship, finish, design, components and general architectural quality of the Improvements to be constructed by Borrower under this Agreement will have a significant and continuing impact on the Project and the surrounding community and that the City's agreement to participate in assisting this Project is based upon Borrower's representation that the Project will be of high quality in design, construction and finish. Accordingly, Borrower understands and agrees that it will be required to develop the Project (i) by means of materials, workmanship and an overall design that will result in a residential development that is of high quality and of benefit to the Project and the community, and (ii) in accordance with applicable design guidelines. Borrower assumes all responsibility for the design and construction of, and shall let contracts for (or cause contracts to be let for), the construction of the Project. The City shall not be responsible to Borrower or to third parties in any way for any defects in the design of the Project, nor for any structural or other defects in any work done according to the approved design of the Project, nor for any delays reasonably caused by the review and approval processes established by this Section.

Section 3.6 Cost of Construction

The cost of planning, designing, developing and constructing the Project shall be borne solely by Borrower. Borrower will begin and complete all construction, development and other tasks specified therein within the times specified in the Schedule of Performance, subject to Force Majeure Delay. The Schedule of Performance may be subject to revision from time to time as mutually agreed on in writing between Borrower and the City.

Borrower has proposed, and City has approved, the Project Budget appended to this Agreement. Borrower acknowledges that City is relying on Borrower's experience and expertise in establishing the costs for the Project, and Borrower represents that the Project Budget is based on the best, good faith estimate of Borrower of the costs that are likely to be incurred for the Project.

Section 3.7 Schedule of Performance; Construction of Improvements

Borrower shall begin and complete all construction and development within the times specified in the Schedule of Performance, with such reasonable extensions of said times as may be granted by the City and subject to Force Majeure Delay. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing by Borrower and City. In the event that the sum of the proceeds of the City Loan available for disbursement together with any other sources to complete the construction of the Improvements are, or at any time become, in the reasonable judgment of the City, insufficient to pay all costs to achieve Completion in accordance with this Agreement, then Borrower will pay such costs.

Borrower shall prosecute to completion the construction of the Improvements as provided in Plans and Specifications and this Agreement. During periods of construction, Borrower shall submit to the City a written report of the progress of the construction when and as requested by the City. The report shall be in such form and detail as may be reasonably required by the City and shall include a reasonable number of construction photographs (if requested) taken since the last report by Borrower.

Section 3.8 Construction Contract

The City shall have the right, but not the obligation, to cure defaults under the Construction Contract and to assume Borrower's obligations and rights under the Construction Contract; provided that, such right to cure and assume the Construction Contract shall be subject to the rights, if any, of any Senior Lender with respect to such Construction Contract. Further, the Construction Contract shall set forth a reasonably detailed schedule for completion of each stage of construction.

The City approval of the Construction Contract shall not constitute a waiver by the City of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Contract.

Any amendments to the Construction Contract subsequent to the closing of the City Loan not evidenced by a Change Order shall be approved in writing by the City prior to taking effect. In the event of any disapproval, the City shall, concurrently with delivery of the notice of such disapproval to Borrower, inform Borrower in writing of the reasons for disapproval. Borrower and the general contractor shall have twenty (20) Business Days from receipt of any notice from the City specifying required changes ("**Construction Contract Disapproval Notice**"), within which to notify the City that Borrower agrees to negotiate with the general contractor to make such changes or that Borrower objects to any such requested changes. If Borrower notifies the City within said twenty (20) Business Day period of its objections to any such requested changes, then the City and Borrower shall meet at a mutually acceptable time to discuss their differences within ten (10) Business Days after the Borrower gives such notice. Following such meeting, Borrower shall use commercially reasonable efforts to cause the general contractor to revise the Construction Contract and resubmit it for approval to the City as required by this Agreement by the later of (i) thirty (30) calendar days after receipt of the Construction Contract Disapproval Notice, or (ii) ten (10) Business Days after such meeting, unless the nature of such changes requires a longer period of time, in which case Borrower shall resubmit said revised Construction Contract as soon as possible, and, in any case, no later than forty five (45) calendar days after receipt of the Construction Contract Disapproval Notice. Any such resubmissions shall be approved or disapproved and revised within the times set forth herein with respect to the initial submission.

Section 3.9 Subcontracts

All contracts with subcontractors shall be entered into with duly licensed and insured subcontractors. City shall have the right to request copies of the contracts with subcontractors.

Section 3.10 Role of Architect

Borrower shall use commercially reasonable efforts to cause, and its written agreements with the architect for the Project shall require, that the architect supervise the construction of the Project, attend all draw meetings, and sign off on all Change Orders and construction draws with respect to the Project. Borrower shall provide the City with copies of all written agreements with the architect.

Section 3.11 [Intentionally deleted.]

Section 3.12 Prevailing Wages and Davis Bacon Act; Indemnity Regarding Labor Standards and Construction of Project

Borrower shall cause the construction of the Project and the payment of all wages in connection therewith to be in accordance with the provisions of California Labor Code §§ 1720 through 1861 (collectively, 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 and development of the Project. Borrower agrees and acknowledges that failure to comply with this paragraph shall be a default hereunder.

To the fullest extent permitted by law, Borrower shall indemnify, defend and hold harmless the City Indemnitees from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys’ fees and court costs), where the same arise out of, are a consequence of, are in connection with, or are in any way attributable to, in whole or in part, to: (i) Borrower’s or the contractor’s failure to comply with all applicable laws, including all applicable federal and state labor standards, including, without limitation, the requirements of the Prevailing Wage Law and the Davis Bacon Act, if applicable, (ii) defects in the design or construction of the Project, including (without limitation) the violation of any laws, and for defects in any work done according to the City approved plans, or (iii) any breach or failure to perform or act pursuant to this Agreement by Borrower, or by any individual or entity that Borrower shall engage in connection with the Project, including but not limited to officers, agents, employees or contractors of Borrower. Notwithstanding the foregoing, Borrower shall not be required to indemnify and hold harmless the City Indemnitees for liability attributable to the gross negligence or intentional misconduct of the City Indemnitees.

Section 3.13 Compliance with Law

Borrower shall comply with all Governmental Regulations in the construction, use and operation of the Project, including all applicable federal, state and local statutes, ordinances, regulations and laws, including without limitation, all applicable federal, state, and local labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Santa Clara City Code, and all applicable disabled and handicapped access requirements, including without limitation (as currently exists or may be amended from time to time) the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq., Government Code § 4450, et seq., and Government Code § 11135, et seq.

Section 3.14 Nondiscrimination During Construction

Borrower certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all contractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq., the

Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b, et seq., 42 U.S.C. § 1981, the California Fair Employment and Housing Act, Government Code § 12900, et seq., the California Equal Pay Law, Labor Code § 1197.5, Government Code § 11135, the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (applicable to those with fifteen (15) or more employees), Executive Order 11246-Equal Employment Opportunity, as amended, its implementing regulations at 41 CFR Part 60, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Nondiscrimination notices shall be included in all job postings and posted in a visible place in the offices of all applicable parties.

Section 3.15 General Indemnity

To the maximum extent permitted by law, Borrower agrees to and shall defend, indemnify and hold the City and the City Indemnitees harmless from and against all claims, liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from, in connection with or as a result of 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 alleged negligent or intentional acts or omissions of Borrower, its officers, agents or employees in the performance of this Agreement or construction of the Project. This indemnification provision supplements and in no way limits the scope of the indemnification set out elsewhere in this Agreement. The indemnity obligation of Borrower under this section shall survive the expiration or termination, for any reason, of this Agreement.

Without affecting the rights of the City Indemnitees under any provisions of this Agreement, Borrower shall not be required to indemnify and hold harmless the City Indemnitees for liability attributable to the gross negligence or intentional misconduct of the City Indemnitees, provided such gross negligence or intentional misconduct is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where the City Indemnitees are shown to have been grossly negligent or to have acted with intentional misconduct and where the City Indemnitees' gross negligence or intentional misconduct accounts for only a percentage of the liability involved, the obligation of Borrower will be for that entire portion or percentage of liability not attributable to the gross negligence or intentional misconduct of the City Indemnitees.

Section 3.16 Insurance Requirements

From the date of the closing of the City Loan until the expiration of the City Regulatory Agreement, and for any time required thereafter as set forth below, the Borrower shall purchase and maintain in full force and effect, at no cost to the City, the following insurance policies:

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

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements,

certificates of insurance, and coverage verifications as defined in Attachment No. 4 entitled “Insurance Requirements” attached hereto.

Section 3.17 Disclaimer of Responsibility by the City

Except as provided in this Agreement, the City neither undertakes nor assumes nor will have any responsibility, right or duty to Borrower or to any third party to review, inspect, supervise, pass judgment upon or inform Borrower or any third party of any matter in connection with the Property, whether with respect to the condition of the Property or its quality, adequacy or suitability to the Project, or with respect to any person furnishing services with regard to the Property, or otherwise. Borrower and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Borrower or to any third party by the City or the City in connection with such matter is for the public purpose of providing affordable housing, and neither Borrower (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon.

Section 3.18 Rights of Access

At any time prior to Completion, City and its representatives shall have the reasonable right of access to the Property, upon two (2) Business Days’ written notice to Borrower (except in the case of an emergency, in which case City shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of City shall be those who are so identified in writing by City.

Section 3.19 Taxes and Assessments

Borrower shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Project during Borrower’s ownership thereof, subject to Borrower’s right to contest in good faith any such taxes through the appropriate processes. Borrower shall remove or have removed any levy or attachment made on the Project or any part thereof, or assure the satisfaction thereof within a reasonable time. Nothing herein contained shall be deemed to prohibit the Borrower from (a) obtaining an abatement of real estate taxes under Revenue and Taxation Code Section 214(g) or (b) contesting the validity or amount of any tax assessment, encumbrance or lien, or to limit the remedies available to the Borrower in respect thereto.

Section 3.20 Liens and Stop Notices

Except for the liens on the Project granted in connection with the City Loan and the Senior Loans, Borrower shall not allow to be placed on the Project or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Project, Borrower shall within thirty (30) calendar days of such recording or service or within ten (10) Business Days of the City’s demand, whichever last occurs: (a) pay and discharge the same (or cause the general contractor to do so); (b) effect the release thereof by recording and delivering to the City a surety bond in sufficient form and amount; (c) demonstrate to the City’s reasonable satisfaction that One Hundred Twenty Five Percent (125%) of the stop notice amount is set aside

in the unfunded portion of the Construction Budget to account for such claim; or (d) provide such other assurances which the City deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the City from the effect of such lien or bonded stop notice.

Section 3.21 Rights to Architectural Agreements and Plans and Specifications

Subject to the rights of the beneficiary of the Construction Loan Deed of Trust, Borrower has assigned to City as security for Borrower's obligations hereunder (a) all environmental, architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto, and (b) all reports, studies, plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto, heretofore or hereafter prepared by any architect, engineer or other person or entity (collectively the "**Architect**"), for or on behalf of Borrower in connection with the construction of the Project pursuant to that certain Assignment of Agreements by Borrower for the benefit of City dated as of the date hereof.

Section 3.22 Security Financing; Right of Holders

(a) City Approval of Financing Liens All mortgages and deeds of trust to be recorded against the Project prior to Conversion shall be approved by City.

(b) Holder Not Obligated to Construct Project Improvements The holder of any mortgage or deed of trust or other security interest recorded against the Project will in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee construction or completion.

(c) Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure Whenever the City will deliver any notice or demand to Borrower with respect to any breach or default by Borrower in completion of construction of the Improvements, the City will at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest recorded against the Project, provided that failure to provide such notice shall not affect the City's remedies hereunder. Each holder will (insofar as the rights of the City are concerned) have the right at its option within thirty (30) calendar days after the receipt of the notice, to cure or remedy or commence to cure or remedy any default and to add the cost to the security interest debt and the lien on its security interest. Nothing contained in this Agreement will be deemed to permit or authorize the holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed Borrower's obligations to the City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform the obligations. Any holder properly completing the Improvements will be entitled, upon written request made to the City, to a Release of Construction Covenants from the City.

Section 3.23 Liens on Personal Property

Other than in connection with the provision of vending, laundry, cable, satellite TV, or telecommunications services at the Project, Borrower shall not install in, or use in connection with, the Project, any personal property which any party other than the City or Construction Lender has the right to remove or repossess under any circumstances, or on which any party other than the City or Construction Lender has a lien (other than liens permitted in accordance with the terms of this Agreement).

Section 3.24 Removal of Personal Property

Borrower shall not cause or permit the removal from the Project of any items of personal property owned by Borrower (other than tools and equipment used in the development of the Project) unless (i) there is no uncured event of default by Borrower under this Agreement, and (ii) Borrower promptly substitutes and installs on the Project other items of equal or greater value in the operation of the Project, all of which items shall be free of liens (other than liens permitted in accordance with the terms of this Agreement) and shall be subject to the lien of the City Deed of Trust, and Borrower executes and delivers to the City all documents reasonably required by the City in connection with the attachment of such liens to such items. Borrower shall keep detailed records of each such removal and shall make such records available to the City upon written request from time to time.

Section 3.25 Release of Construction Covenants

Promptly after Completion of the Improvements, as generally and specifically required by this Agreement and in particular the Scope of Development, the City shall furnish Borrower with a Release of Construction Covenants upon written request therefor by Borrower. The City shall not unreasonably withhold such Release of Construction Covenants and such Release of Construction Covenants shall be issued so long as Borrower has constructed and developed the Property in accordance with this Agreement and substantially in accordance with the construction drawings approved by the City for the Project. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of all of the construction obligations required by this Agreement. The Release of Construction Covenants shall be in a form mutually, reasonably, and in good faith agreed upon by City and Borrower and shall be a conclusive determination of satisfactory completion of the Project and all construction obligations required by this Agreement. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Project shall not (because of such ownership, purchase, lease or acquisition) incur any construction obligation or liability under this Agreement.

The Release of Construction Covenants shall be in such form as to permit it to be recorded in the Recorder's Office of Santa Clara County. Certificates of Completion of construction for less than the completed Improvements and development of the entire Property shall not be recorded.

If the City refuses or fails to furnish a Release of Construction Covenants for the Property after written request from Borrower, the City shall, within thirty (30) days of the written request, provide Borrower with a written statement of the reasons the City refused or failed to furnish a Release of Construction Covenants. The statement shall also contain the City's opinion of the

action Borrower must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, and/or minor items, the City will issue its Release of Construction Covenants upon the posting of a bond by Borrower with the City in an amount representing a fair value of the work not yet completed.

Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Borrower to the beneficiary of the Construction Loan Deed of Trust or any other Person. Such Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

Section 3.26 Developer Fee

Borrower shall not receive payments of the Developer Fee in excess of the amounts or ahead of a written schedule contained in the Project Pro Forma approved by the City.

Borrower covenants and agrees that it shall not receive payments of Developer Fee beyond the first payment agreed to in the schedule described above unless and until it has demonstrated to the City's reasonable satisfaction that all prevailing wage obligations with respect to the construction of the Project have been met in accordance with the terms and conditions of the City Loan Documents. Borrower further agrees that in the event any prevailing wage obligations, draw holdbacks or related fees that may become payable to the City hereunder cannot be funded from any other source, that such amounts shall be payable to the City from Developer Fee.

In the event that actual construction costs exceed the Construction Budget, Borrower shall defer the amount of the Developer Fee necessary to cover the actual construction costs to the extent unfunded by sources other than the City Loan and such portion of the Developer Fee shall be considered deferred Developer Fee for purposes of this Agreement. [In the event Borrower demonstrates to City's reasonable satisfaction upon completion of construction that there have been material savings from the Construction Budget, Borrower shall be permitted to reduce general partner equity [in an amount equal to fifty percent (50%) of such cost savings, and the remaining fifty percent (50%) shall be used to make payment of principal and interest on the City Loan.]] [Note: Under discussion by City and Core.]

PART 4. SALES AND USE TAX.

Borrower shall use- commercially reasonable efforts to. adopt sales and use tax reporting procedures allowable under applicable law that will provide City (in its capacity as a Governmental Authority) the greatest allocation of California sales and use tax revenues feasible, and shall cause their general construction contractors, vendors and occupants of the Improvements to use commercially reasonable, efforts to adopt these procedures, including by designating the Property as the place of sale and place of use of materials, goods, and services to be used in connection with the construction and operation of the Project. Borrower shall propose to City for its reasonable approval a process that will designate the Property as the place of sale of fixtures furnished and installed by Borrower for the Project, and to do the same with respect to construction materials used in connection with the Improvements. Notwithstanding the

foregoing, the failure of such general construction contractors, vendors and Improvement occupants to allocate sales and use tax revenues to the City shall not constitute a breach by Borrower under this Agreement. Borrower shall bear all costs associated with their obligations under this Part 4. [Borrower shall comply with the Provisions Relating to Construction Sales and Use Tax Allocations attached hereto as Attachment No. 8[?].]

PART 5. USE OF THE PROPERTY

Section 5.1 Use Covenants

Borrower covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Project or any part thereof, that the Project shall be used, maintained and operated in compliance with the City Regulatory Agreement. Borrower 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 Restricted Period. All uses conducted on the Project, including, without limitation, all activities undertaken by Borrower pursuant to this Agreement, shall conform to all applicable provisions of the Santa Clara City Code.

Section 5.2 Affordable Housing Requirements

5.1.1. Affordable Units

Borrower covenants and agrees to make available, restrict occupancy to, and rent the Affordable Units solely to Qualified Tenants at an Affordable Rent during the Restricted Period.

5.1.2. Duration of Affordability Requirements

The Affordable Units shall be subject to the requirements of this Section throughout the Restricted Period.

5.1.3. Selection of Qualified Tenants

Prior to selecting any tenants for the Affordable Units, Borrower shall submit to the City the Management Plan (the terms of which shall comply with the City Regulatory Agreement) which shall include proposed tenant selection policies and criteria for the Affordable Units. The tenant selection criteria shall be subject to the City's approval or disapproval thereof in writing. In addition, the tenant selection policies and criteria shall:

- (1) Be consistent with the purpose of providing housing for Qualified Tenants;
- (2) Be reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
- (3) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(4) Give prompt written notification to any rejected applicant of the grounds for any rejection.

In addition, and to the extent permitted by any applicable Governmental Regulations, including without limitation, Fair Housing Laws, preference shall also be given to tenant applicants residing in the vicinity of the Project first and then within the City limits.

In connection with its Qualified Tenant selection process, Borrower agrees to obtain criminal background checks on all tenant applicants in accordance with all applicable Governmental Regulations. Borrower shall determine, in accordance with all applicable Governmental Regulations, whether or not the tenant applicant's arrest and/or conviction record, if any, warrants denial of such tenant's application. Borrower shall maintain or destroy the results of such criminal background checks in accordance with all applicable Governmental Regulations.

5.1.4. Income Requirements

In order to assure compliance with the rent and occupancy restrictions set forth in the City Regulatory Agreement, Borrower shall, prior to the initial leasing of an Affordable Unit, verify the income of the proposed Household. Thereafter, on an annual basis throughout the Restricted Period, Borrower shall obtain and cause to be submitted to the City, at Borrower's expense, a verification of all household sources of income as required by the City Regulatory Agreement demonstrating that such household constitutes a Qualified Tenant in accordance herewith and meets the eligibility requirements established for the Affordable Unit.

5.1.5. Lease Requirements

Prior to rental of any of the Affordable Units, Borrower shall submit a standard lease form to the City for the City's approval, which approval shall not unreasonably be withheld, conditioned or delayed. The standard lease agreement shall not be amended in any material respects (except as required by applicable laws) without prior written the City approval. Borrower shall enter into a lease in the form approved by the City, and containing those provisions required by the City Regulatory Agreement, with each Qualified Tenant of an Affordable Unit.

5.2. Long Term Management of the Project

Borrower and the Property Manager shall enter into a written agreement regarding the services of the Property Manager (the "**Management Agreement**"). Property management fees paid to the Property Manager shall not exceed six percent (6%) of gross rents on an annual basis. The Management Agreement shall contain, inter alia, an express provision (a) obligating the Property Manager to cooperate fully with the City with respect to the on-site inspections to be made by the City pursuant to the City Regulatory Agreement, and (b) indicating that the term thereof shall not exceed twelve (12) months including a provision for termination by Borrower with or without cause at any time upon notice not to exceed thirty (30) days.

Prior to the issuance of the Certificate of Occupancy, Borrower shall submit to the City a Management Plan reasonably acceptable to the City, describing the proposed plans for managing and operating the Property. Borrower shall manage and operate the Property in accordance with

the approved Management Plan, including such amendments as may be approved in writing from time to time by the Borrower and the City, for the entire Restricted Period.

5.3. Annual Budget and Quarterly Reporting

Borrower shall submit on or before the first day of each fiscal year after Completion of construction for the entire Restricted Period an estimated annual budget for management of the Property (the “**Annual Project Budget**”) in accordance with the Management Plan. The Annual Project Budget shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amount required for insurance and all other expenses incident to the operation of the Project; and shall show the expected revenues to pay such expenses, including annual debt service requirements and reserve fund deposits and balances. The Annual Project Budget, including any amendments proposed by the Borrower, shall be subject to the approval of the City, which approval shall not be unreasonably withheld or delayed.

Beginning on the date of first occupancy, for each fiscal year of the Restricted Period, Borrower shall also submit on a quarterly basis a quarterly report for the management of the Property (the “**Quarterly Report**”) in a form that is reasonably acceptable to the City. The Quarterly Report shall include a profit and loss statement, budget to date figures, and occupancy report. The City, in his sole discretion may waive the requirement of the Quarterly Report for one or more quarterly reporting periods. However, such waiver shall not operate to waive any subsequent requirement of the Quarterly Report for the Restricted Period upon written notice to Borrower by the City.

Section 5.3 Maintenance of the Property

Prior to the issuance of the Certificate of Occupancy, the Borrower shall prepare and submit to the City for review and approval a program (the “**Maintenance Program**”) for the exterior and interior maintenance of the Property and the Improvements. The Maintenance Program may be included within its Management Plan.

The Maintenance Program shall describe in reasonable detail the standards to be followed in maintaining the interior and exterior of the Improvements, including a schedule indicating the proposed frequency of each element of maintenance, and shall include, at a minimum, the following: periodic cleaning of the interior and exterior of the Improvements, including windows; removing graffiti; removing debris and waste materials and otherwise maintaining indoor and outdoor areas of the Property; maintaining any lawns, plants, shrubs and trees or other landscaping planted on the Property; performing inspections of all exterior features to determine whether repairs are required; conducting periodic protective treatments such as rust removal and caulking; conducting repairs to facades, roof, doors, windows and other exterior features; maintaining fencing and other security devices and systems; periodic repainting of the exterior; periodic repainting of the interior units and common areas; periodic replacing of the interior unit carpets; checking building systems, including, but not limited to the heating and cooling systems, smoke alarms and water heaters; checking interior unit appliances; and monitoring interior unit bathrooms for mold/mildew. The Maintenance Program, including any amendments proposed by the Borrower, shall be subject to the reasonable approval of the City.

At all times after Completion of construction during the Restricted Period, the Borrower shall maintain the Property and the Improvements in accordance with the approved Maintenance Program. To implement this requirement, Borrower agrees to budget sufficient funds to pay for all reasonably anticipated costs (as indicated in the Annual Maintenance Budget). In the event the Borrower fails to maintain the Property and the Improvements in accordance with the approved Maintenance Program, and does not cure such failure within thirty (30) days following notice from the City, the City shall have the right, but not the obligation, to enter the Property, correct any violation, and hold the Borrower responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property. Prior to undertaking any work to correct any such maintenance deficiency, the City shall provide written notice that the Borrower correct the deficiency within a reasonable time. The Borrower shall have a reasonable time in which to comply following such notice from the City.

Section 5.4 Nondiscrimination Covenants

Borrower 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 Project nor shall Borrower 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 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 Borrower as to the Units or the 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 Borrower and any successors in interest to the 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.

Section 5.5 Conflict with the City Regulatory Agreement

In the event of a conflict between this Part 5 and the City Regulatory Agreement, the provisions of the City Regulatory Agreement shall control.

Section 5.6 Reserves [Note: Reserves to be discussed by the Parties.]

(a) Transition Reserve. If requested by any Senior Lender, Borrower covenants and agrees to fund a transition reserve in such amount as is required by the Senior Lender (“**Transition Reserve**”) upon completion of construction. Such amounts shall be held in a separate interest-bearing trust account. Funds in the Transition Reserve shall be used solely to cover cash flow deficiencies of the Project arising from the termination, reduction or expiration of any project-based vouchers, to the extent the Project has project-based vouchers. All withdrawals from the Transition Reserve are subject to the prior written consent of the City, which such consent shall not be unreasonably withheld or delayed. Any funds in the Transition Reserve upon such termination shall be deposited into a social services reserve (the “**Social Services Reserve**”) to be held in a separate interest-bearing trust account. Borrower shall obtain the City’s approval prior to any withdrawal from the Social Services Reserve, which approval may be accomplished by the City approval of Borrower’s annual operating budget, including disbursements from the Social Services Reserve, or by a separate approval, which such approval shall not be unreasonably withheld or delayed.

(c) Operating Reserve. If requested by any Senior Lender, Borrower covenants and agrees to fund an operating reserve in the amount required by the Senior Lender (“**Operating Reserve**”) upon completion of construction. Such amounts shall be held in a separate interest-bearing trust account. Funds in the Operating Reserve shall be used solely to cover cash flow deficiencies of the Project. All withdrawals from the Operating Reserve are subject to the prior written consent of the City, which such consent shall not be unreasonably withheld or delayed.

(d) Replacement Reserves. If requested by any Senior Lender, Borrower covenants and agrees to fund a replacement reserve in a capitalized amount as of the Conversion from operating income on monthly basis in amount required by the Senior Lender (“**Replacement Reserve**”). Such amounts shall be held in a separate interest-bearing trust account. Funds in the Replacement Reserve shall be used solely to cover capital replacements for the Project. All withdrawals from the Replacement Reserve are subject to the prior written consent of the City, which such consent shall not be unreasonably withheld or delayed.

Section 5.7 Social Services

Borrower covenants and agrees to provide a Social Services Plan for the Project to the City. Borrower covenants and agrees to provide Social Services to the residents of the Project in accordance with the Social Services Plan.

Section 5.8 Hazardous Substances

Concurrently with the execution of this Agreement, City and Borrower have entered into the City Environmental Indemnity.

Section 5.9 Monitoring Fee

On or before July 1 of each year, commencing on the July 1 following conversion of the City Loan to a permanent term loan until the expiration of the Restricted Period, Borrower covenants and agrees to pay to the City the Monitoring Fee for the immediately preceding calendar year or portion thereof, prorated for the number of months in the partial year; provided that the Monitoring Fee shall be reduced (but not below \$0) to the extent that Borrower pays an affordable housing monitoring fee to the County.

Section 5.10 Termination of State Development Agreement.

At the written request of Borrower, the City shall execute, deliver and record a termination of the State Development Agreement upon the issuance of a Certificate of Occupancy for the Project. City shall cooperate with Borrower to obtain the State of California's consent to the termination to the State Development Agreement, to the extent the State of California's consent is required.

Section 5.11 Effect of Violation of the Terms and Provisions of this Agreement

The City is deemed a beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The City shall have the right if the covenants contained in this Agreement are breached and such breach is not cured within the time periods set forth in Section 6.1, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants are entitled.

PART 6. DEFAULTS, REMEDIES, AND TERMINATION

Section 6.1 Defaults — General

Subject to the Force Majeure Delay and any extensions of time approved in writing by the parties, failure or delay by either party to perform any term or provision of this Agreement at the time indicated in this Agreement constitutes a default under this Agreement. 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 reasonable 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 time of default. Except as otherwise expressly provided in this Agreement, 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. Delays by either party in asserting any of its rights and remedies shall not deprive either 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.

If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of thirty (30) days after such notice is given within which to cure the default prior to exercise of remedies by the injured party.

If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party.

If Borrower fails to take corrective action or cure the default within a reasonable time, the City shall give the Senior Lender and, as provided in paragraph f., below, the Investor Limited Partner notice thereof. Subject to the terms of the Borrower's partnership agreement, the Investor Limited Partner may take such action, including removing and replacing the general partner or managing member of the Borrower with a substitute general partner or member, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The City agrees to accept cures tendered by any Senior Lender or Investor Limited Partner within the cure periods provided in the Note. Additionally, in the event the Senior Lender or Investor Limited Partner is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Borrower or the general partner of Borrower, the City agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or Investor Limited Partner is so precluded from acting, not to exceed 90 days, provided such Investor Limited Partner and Senior Lender are otherwise in compliance with the foregoing provisions. In no event shall the City be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given. [Note: The investor or lender may require changes to this section.]

In the event of a default by Borrower of any of its obligations under the City Loan Documents and expiration of any applicable grace, notice and/or cure periods, Borrower shall pay to City interest on the outstanding principal of the City Loan, at an annual rate equal to the lesser of (i) ten percent (10%) or (ii) the highest interest allowed by law, from the date of the default until the date that the default is cured or the City Loan is repaid in full.

City shall send to the Investor Limited Partner a copy of all notices of default and all other notices that City sends to Borrower, at the address for the Investor Limited Partner as provided by written notice to City by Borrower.

Section 6.2 Institution of Legal Actions

Subject to the notice and cure provisions of Section 6.1, in addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California, in any other appropriate court of that county.

Section 6.3 Applicable Law

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

Section 6.4 Acceptance of Service of Process

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

In the event that any legal action is commenced by the City against the Borrower, service of process on the Borrower shall be made by personal service upon the Borrower (or upon a general partner, managing member or officer of the Borrower) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

Section 6.5 Rights and Remedies Are Cumulative

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 or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 6.6 Damages

If either party defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 6.1 and the non-recourse provisions of Section 6.10, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may, after such notice and opportunity to cure (but not before) commence an action for damages against the defaulting party with respect to such default. Notwithstanding the foregoing, neither Borrower nor City shall have the right to recover any punitive, consequential, or special damages.

Section 6.7 Specific Performance

If either party defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 6.1, the non-defaulting party, at its option, may, after such notice and opportunity to cure (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

Section 6.8 Termination by Either Party

Either party shall have the right to terminate this Agreement in the event the other party is in default of any material term or provision of this Agreement, and, following notice, fails to cure such default within the time provided in Section 6.1.

Section 6.9 Automatic Termination

This Agreement shall automatically terminate upon repayment of the City Loan in full.

Section 6.10 Limited Recourse Obligations After Conversion

The City Loan is a recourse obligation of the Borrower prior to Conversion.

Subject to the provisions and limitations of this Section 6.10, the obligation to repay the City Loan is a nonrecourse obligation of the Borrower from and after Conversion. From and after Conversion, (a) neither Borrower nor any general partner of Borrower shall have any personal liability for repayment of the City Loan, except as provided in this Section 6.10, and (b) the sole recourse of City shall be the exercise of its rights against the Property and any related security for the City Loan.

Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by the City Note or the City Deed of Trust; (b) limit the right of the City to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under the City Note or the City Deed of Trust or any action or proceeding thereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Borrower; (c) release or impair the City Note or the City Deed of Trust; (d) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing the City Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing the City Note; (f) relieve Borrower of any of its obligations under any indemnity delivered by Borrower to City; or (g) affect in any way the validity of any guarantee or indemnity from any person other than the Borrower of all or any of the obligations evidenced and secured by the City Note or the City Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Borrower shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Borrower, its principals, shareholders, partners received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the Property, ordinary and reasonable

capital improvements to the Property, debt service, real estate taxes in respect of the Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, City may recover directly from Borrower or from any other party:

(A) any damages, costs and expenses incurred by City as a result of fraud or any criminal act or acts of Borrower or any partner, shareholder, officer, director or employee of Borrower, or of any member or general partner of Borrower, or of any general or limited partner of such member or general partner;

(B) any damages, costs and expenses incurred by City as a result of any misappropriation of funds provided for the construction of the Improvements, rents and revenues from the operation of the Improvements or proceeds of insurance policies or condemnation proceeds; and

(C) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that City shall pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in any such enforcement or collection action).

Section 6.11 Borrower Representations and Warranties

Borrower represents and warrants as of the effective date of this Agreement (1) that it has access to professional advice and support to the extent necessary to enable Borrower to fully comply with the terms of this Agreement; (2) that it and its general partners are duly organized, validly existing and in good standing under the laws of the State of California; (3) that it has the full power and City to undertake the Project and to execute this Agreement; (4) that the persons executing and delivering this Agreement are authorized to execute and deliver such documents on behalf of Borrower; (5) except as disclosed to the City in writing, there are no actions or proceedings pending or, to the best of the Borrower's knowledge, threatened against the Borrower or Borrower's general partners before any court or administrative agency in any way connected with the Property or the Project which could adversely affect the Borrower's ability to perform the activities contemplated hereunder; (6) neither this Agreement nor anything provided to be done hereunder violates or shall violate any contract, agreement or instrument to which the Borrower or a general partner of Borrower is a party or which affects the Project or any part thereof; (7) the Borrower is not in default in respect of any of its obligations or liabilities pertaining to this Agreement, nor is there any state of facts or circumstances or conditions or events which, after notice, lapse of time, or both, would constitute or result in any such default under this Agreement; and (8) neither the Borrower nor its general partners has entered into any agreements which will adversely affect the Borrower's right to develop and use the Project as provided in this Agreement, and neither the Borrower nor its general partners will enter into any such agreements after the date hereof.

PART 7. GENERAL PROVISIONS

Section 7.1 Notices

Formal notices, demands and communications between the City and the Borrower and Investor Limited Partner shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Borrower and Investor Limited Partner, as designated in Sections 1.4 and 1.5 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 7.1. Any notice that is transmitted by electronic facsimile or electronic mail transmission followed by delivery of a “hard” copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by the recipient; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 7.2 Conflicts of Interest

No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested.

The Borrower warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

Section 7.3 Nonliability of City Officials and Employees

No member, official, employee or consultant of the City shall be personally liable to the Borrower, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Borrower or to its successor, or on any obligations under the terms of this Agreement.

Section 7.4 Force Majeure

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to Force Majeure Events.

Section 7.5 Inspection of Books and Records

The Borrower shall maintain complete, accurate, and current records pertaining to the Property for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records, during regular business hours upon reasonable advance notice. Records must be kept accurate and current.

Section 7.6 Approvals

Except as otherwise expressly provided in this Agreement, approvals required of City or Borrower in this Agreement, including the attachments hereto, shall not be unreasonably

withheld or delayed. All approvals shall be in writing. Except as otherwise expressly provided in this Agreement, failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.

Section 7.7 Administration

This Agreement shall be administered by the City Manager of the City or his or her designated representative (collectively, 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 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.

Section 7.8 No Third Party Beneficiaries

This Agreement is made solely and specifically between the City and Borrower and their respective successors and assigns; and, except as expressly provided otherwise in this Agreement, no other person will have any rights, interest or claims under this Agreement or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Section 7.9 Reimbursement of Expenses

Borrower shall reimburse the City for all reasonable costs and expenses (including the allocated cost of the City staff and resources) incurred by the City in connection with the provision and administration of the City Loan and the City Loan Documents.

Section 7.10 Borrower Authority

Borrower hereby represents that the person executing this Agreement on behalf of Borrower has full authority to do so and to bind Borrower to perform pursuant to the terms and conditions of this Agreement.

Section 7.11 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other similar relationship between the parties hereto or cause City to be responsible in any way for the debts or obligations of Borrower or any other Person.

Section 7.12 Compliance with Law

Borrower agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and the Improvements, as well as operations conducted thereon.

Section 7.13 Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 7.14 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

Section 7.15 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

Section 7.16 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.

Section 7.17 Construction and Interpretation of Agreement

The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in

lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

PART 8. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement shall constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Property.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Borrower, and all amendment hereto must be in writing and signed by the appropriate authorities of the City and the Borrower. This Agreement and any provisions hereof may be amended by mutual written agreement by the Borrower and the City.

[Signatures appear on next page.]

IN WITNESS WHEREOF, the City and Borrower 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: _____

Date: _____

APPROVED AS TO FORM:

Brian Doyle, City Attorney

[SIGNATURE PAGE TO LOAN AGREEMENT]

[PAGE 1 OF 2]

“BORROWER”

_____,

By: _____

Date: _____

[SIGNATURE PAGE TO LOAN AGREEMENT]

[PAGE 2 OF 2]

ATTACHMENT NO. 1-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:

[to be inserted]

ATTACHMENT NO. 1-B

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:

[to be inserted]

ATTACHMENT NO. 2

SCHEDULE OF PERFORMANCE

(To Be Attached)

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

(To Be Attached)

ATTACHMENT NO. 4

INSURANCE REQUIREMENTS

(To Be Attached)

ATTACHMENT NO. 5

PROJECT BUDGET

(To Be Attached)

ATTACHMENT NO. 6

CLOSING REQUIREMENTS

The following are the Closing Requirements:

1. Construction Budget and Construction Loan. Borrower shall have submitted and obtained the City's approval of the Construction Budget and Construction Loan, showing the projected predevelopment and construction costs of the 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 City approval of the Construction Loan shall not constitute a waiver by the City of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Loan.
2. Governmental Approvals. The City shall have received evidence reasonably acceptable to it that Developer has obtained all Governmental Approvals necessary for the construction and completion of the Project, provided that ready-to-issue letters with respect to building permits shall be acceptable.
3. Project Pro Forma. Borrower shall have submitted and the City shall have approved the Project Pro Forma.
4. Construction Bonds. To the extent that the Construction Lender and/or the Investor Limited Partner requires payment and performance bonds in connection with the construction of the Project, Borrower shall have obtained and delivered to the City copies of the bonds meeting the Construction Lender's and/or the Investor Limited Partner's requirements for such bonds and naming City as co-obligee.
5. Construction Package. Borrower shall have submitted and the City have approved all material aspects of the construction process, including, without limitation, lists of subcontractors, and other construction related documentation which may be reasonably requested by the City.
6. Plans and Specifications. Borrower shall have submitted and the City shall have approved the Plans and Specifications for the Project.
7. Insurance Requirements. Borrower, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the Insurance Requirements, and shall have provided City with evidence of such insurance.
8. Architectural Contract. Borrower shall have delivered, and the City shall have approved, a contract with the architect of the Project.
9. Corporate Authority; Good Standing. Borrower shall have delivered to the City satisfactory evidence of Borrower's authority to enter into the City Loan Documents, and good standing certificates for the Borrower and its partners dated within thirty (30) days of Closing.

10. Miscellaneous. Borrower shall have delivered to the City any other item reasonably deemed necessary by the City and shall have fulfilled any other condition reasonably required by the City.

ATTACHMENT NO. 7

CONVERSION REQUIREMENTS

The City shall have no obligation to convert the City Loan to a term loan for permanent financing of the Project except upon satisfaction of the conditions precedent set forth in this Attachment No. 7, or waiver thereof by the City in its sole discretion.

1. No Default. Subject to applicable notice and cure periods, there shall be no condition, event or act which would constitute an event of default by Borrower under the City Loan Documents, the Construction Contract, the Construction Loan, the County Loan, the Limited Partnership Agreement, or any other agreement secured by an interest in the Project or providing financing for the Project, or which upon the giving of notice or the passage of time, or both, would constitute such an event of default.
2. Representations and Warranties. All representations and warranties of Borrower herein contained in this Agreement shall be true and correct in all material respects as and when made and as of the proposed date of conversion to a permanent loan.
3. No Stop Notice. No stop notice (whether bonded or not) shall have been served upon or otherwise delivered to Borrower, the City or Construction Lender in connection with the development of the Project or otherwise in connection with the City Loan, unless Borrower shall have (or shall be with the proceeds of a requested disbursement) (a) paid and discharged the same, or (b) effected the release thereof by delivering to the City a surety bond complying with the requirements of applicable Governmental Regulations for such release.
4. 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 Project or any portion thereof, unless Borrower 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 City 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. City shall have received (i) a copy of the recorded notice of completion, and (ii) either (A) evidence that the statutory lien period has expired, or (B) lien waivers from the Contractor and any subcontractors that previously filed a preliminary notice that they are performing work on the Project that may be subject to mechanic's liens
5. Governmental Regulations. There shall be no condition, event or act existing in connection with the Project which constitutes, or would, with the passage of time, constitute a material violation of any applicable Governmental Regulation.

6. Annual Reporting Forms. Borrower shall have submitted all annual reporting forms required to be submitted to City pursuant to the City Regulatory Agreement as of the date of Conversion.
7. Evidence of Equity Contribution. Borrower shall have provided evidence that Borrower has received capital contributions from the Investor Limited Partner in an amount not less the amount required by the Limited Partnership Agreement. Borrower shall have demonstrated to the City's reasonable satisfaction that such monies have been spent in substantial accordance with the Project Pro Forma or will be spent in accordance with the Project Pro Forma.
8. Rent Schedule; Permanent Pro Forma; Operating Budget. Borrower shall have submitted, the following for the Project, all prepared as of the completion of construction: (a) the Rent Schedule; (b) a Permanent Pro Forma; and (c) an Operating Budget.
9. Management Plan. Borrower shall have submitted the Management Plan.
10. Social Services Plan. Borrower shall have submitted a social services plan for the Project, including a budget therefor incorporated into the Operating Budget.
11. Insurance. Borrower, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the Insurance Requirements and in the amounts specified therein.
12. Construction Loan. The Construction Loan shall be paid in full with all available funds, or paid down, as applicable, and converted to a permanent loan. Any documents required to be recorded in connection therewith shall be executed and recorded in the Official Records.
13. Reserves. Borrower shall have deposited or will be concurrently depositing any reserves required by this Agreement and the Project Pro Forma into one or more separate interest-bearing accounts to be used solely for the Project.
14. Final Cost Certificate. Borrower shall have provided City with a copy of the Final Cost Certificate.

PROMISSORY NOTE

[\$ _____]

Santa Clara, California
_____, 2019

FOR VALUE RECEIVED, _____, a California limited partnership (“**Borrower**”), hereby promises to pay to the CITY OF SANTA CLARA (“**City**”), a public body, corporate and politic, or order, a principal amount of _____ (the “**City Loan**”). This Note is given pursuant to that certain Loan Agreement dated as of _____, between Borrower and the City (the “**City Loan Agreement**”) and evidences the City Loan to Borrower, which provides part of the financing for the development of that certain real property located at _____ in the City of Santa Clara, California and legally described in the City Deed of Trust (the “**Property**”). The obligation of Borrower to City hereunder is subject to the terms of the City Loan Agreement, this Note and the following instruments, each dated on or about the date hereof: an Agreement Containing Covenants (“**Agreement Containing Covenants**”); a Subordinate Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) (“**City Deed of Trust**”); an Assignment of Rents and Leases (“**Assignment of Rents**”); an Assignment of Agreements (“**Assignment of Agreements**”); and a UCC-1 Financing Statement (“**UCC-1**”). Said documents are public records on file in the offices of City. The Borrower shall pay interest at the rate, in the amount and at the time hereinafter provided.

Definitions. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the City Loan Agreement. In addition, the following terms shall have the following meanings:

“**Affiliate**” shall mean (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term “control” as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. For the purposes of this definition, any general partner shall be considered an “Affiliate” of Borrower.

“**Annual Financial Statement**” shall mean the annual audited financial statement of Revenue and Operating Expenses and balance sheet for the Improvements, prepared at the Borrower’s expense, by an independent certified public accountant reasonably acceptable to the City, which shall form the basis for determining the Residual Receipts.

“Apartment Units” shall mean the 165 dwelling units to be constructed on the Property.

“Asset Management Fee” shall mean any fee, regardless of how it is characterized, paid to any partner of Borrower.

“City Deed of Trust” shall mean the Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) executed by Borrower in favor of City and dated on or about the date hereof, which secures this City Note and the City Loan evidenced hereby.

“City Loan” shall mean the loan made by the City to Borrower pursuant to the Agreement, in the maximum amount of [\$_____].

“City Note” shall mean this Promissory Note evidencing the City Loan.

“City Loan Documents” shall have meaning given to it in the City Loan Agreement.

“City’s Share of Residual Receipts” shall have the meaning set forth in Section 8(b), below.

[**“Construction Loan”** shall mean the Construction Period loan to be made to Borrower by [_____] (**“Construction Lender”**), secured by the Construction Loan Deed of Trust. [Definition to be modified depending on senior financing structure]]

[**“Construction Loan Deed of Trust”** shall mean the leasehold deed of trust securing the Construction Loan that is first in priority.] [Definition to be modified depending on senior financing structure]

“Construction Period” shall mean the period of time commencing upon the date hereof and ending upon the [repayment of the Construction Loan and the funding of the Permanent Loan/conversion of the Senior Loan from its construction period to its permanent period]. [Definition to be modified depending on senior financing structure]

“Improvements” shall mean, collectively, the Apartment Units and any ancillary or related improvements to the Apartment Units.

“Low Income Housing Tax Credits” shall mean tax credits authorized by the Tax Reform Act of 1986 and governed by Section 42 of the Internal Revenue Code.

“Occupancy Date” shall mean the date on which the City of Santa Clara issues a temporary certificate of occupancy for the Improvements.

“Operating Expenses” shall mean actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance and management of the Apartment Units and the Property, expressly including, without limitation: debt service on any Senior Loan (including issuer fees and similar fees required under the terms of the Senior Loan); property taxes and assessments; onsite administrative costs (including salaries and benefits); maintenance costs (including materials and labor); reasonable and customary payments to a replacement

reserve account, as required by the Senior Lender and/or Investor Limited Partner; painting, cleaning, repairs and alterations; landscaping; utilities; rubbish removal; certificates, permits and licenses; sewer charges; real and personal property taxes and assessments; insurance; security; advertising, promotion and publicity; office, janitorial, cleaning and building supplies; cable television, satellite and similar facilities; recreational amenities, social services fees supplies and services; a reasonable property management fee, not to exceed six percent (6.0%) of effective gross income; reasonable Asset Management Fees not to exceed Twenty Five Thousand Dollars (\$25,000) in the first year, increased thereafter at an annual rate not to exceed three percent (3.0%) per year; [payments to the Investor Limited Partner of any adjuster payments; repayments of any operating deficit loans to partners of Borrower][Subject to City approval]; purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings (other than from reserves); fees and expenses of accountants, attorneys, consultants and other professionals, including annual audits and tax return preparation costs payable to a third party; and the amortized value of tenant improvements. The calculation of Operating Expenses shall be subject to the reasonable approval of the City. [To be updated and approved by the parties.]

[**“Permanent Loan”** shall mean the permanent loan to be made to Borrower by the Construction Lender or other lender approved in accordance with the terms and conditions of the Lease (**“Permanent Lender”**), secured by the Permanent Loan Deed of Trust. [Definition to be modified depending on senior financing structure]]

[**“Permanent Loan Deed of Trust”** shall mean the leasehold deed of trust securing the Permanent Loan that is first in priority. [Definition to be modified depending on senior financing structure]]

[**“Permanent Period”** shall mean the period of time commencing upon the repayment of the Construction Loan and the funding of the Permanent Loan/conversion of the Senior Loan from its construction period to its permanent period].

“Permitted Transfer” shall have meaning given to it in the City Loan Agreement.

“Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

“Property” shall have meaning given to it in the City Loan Agreement.

“Residual Receipts” shall mean (a) the Revenue minus (b) the Operating Expenses, calculated on a 12-month basis minus (c) the theretofore unpaid portion of the Deferred Developer’s Fee. All calculations of Residual Receipts shall be subject to verification and reasonable approval by the City.

“Revenue” shall mean the gross rental income from the Improvements, and any other income to the Borrower derived from the ownership, operation and management of the Property.

“Senior Lender” shall mean the maker of any Senior Loan, any construction lender, credit enhancer or construction period guaranty facility, including but not limited to _____ as the Construction Lender and the Permanent Lender.

“Senior Loan” shall mean, during the Construction Period, the Construction Loan, and during the Permanent Period, the Permanent Loan.

“Investor Limited Partner” shall mean any Person who will be an investor limited partner in Borrower’s limited partnership and who will purchase the Low Income Housing Tax Credits and own 99.99% interest in the Borrower.

“Term” of this Note shall mean fifty-five (55) years from Conversion.

1. This Note evidences the obligation of the Borrower to the City for the repayment of the City Loan. None of the funds provided pursuant to the City Loan were funded directly or indirectly with any obligation the interest on which is exempt from tax under Section 103 of the Internal Revenue Code of 1986, as amended, or pursuant to any United States government federal source.

2. This Note is payable at the principal office of the City, 1500 Warburton Avenue, Santa Clara, California 95050, or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

3. This Note shall be secured by the City Deed of Trust.

4. This Note shall bear simple interest at the rate of [__percent (__%)], which shall begin to accrue upon disbursement.

5. Except as described in Section 6 hereof, no payments shall be due and payable under this Note except to the extent of the City’s share of Residual Receipts as described in Section 7, below.

6. The entire unpaid principal balance of this Note and any accrued but unpaid interest shall be due and payable upon the expiration of the Term hereof, or immediately upon the occurrence of either of the following:

(a) if the Property or any portion thereof or interest therein is sold, transferred, assigned or refinanced, without the prior written approval of the City, except as otherwise permitted in this Note or the City Loan Agreement; or

(b) if there is an event of default by the Borrower under the terms of this Note or any of the City Loan Documents, the Lease, or any deed of trust or other instrument securing the Senior Loan or other obligations secured by a deed of trust on the Property, which is not cured within the respective time period provided herein and therein.

7. Prior to the expiration of the Term hereof, Borrower shall be obligated to repay the City Loan exclusively from the City’s share of Residual Receipts, as follows:

(a) Following the date of Conversion, Borrower must utilize fifty percent (50%) of Residual Receipts with respect to each calendar year to repay the City Loan. Payments due hereunder must be made no later than one hundred twenty (120) days following the end of the applicable calendar year.

(b) All payments to City shall be applied first to the payment of all expenses, charges, costs and fees incurred by or payable to City by Borrower pursuant to the terms of the City Loan Documents (in such order and manner as City, in its sole discretion, may elect), then to the payment of all interest accrued to the date of such payment, and then to reduce the principal amount owed. All prepayment of principal on this Note shall be applied to the most remote principal installment or installments until paid. Notwithstanding anything to the contrary contained herein, after the occurrence and during the continuation of a default under the City Deed of Trust (after expiration of all applicable notice and cure periods), all amounts received by City from any party shall be applied in such order as City, in its sole discretion, may elect.

(c) [Parties to agree on treatment of development cost savings.]

8. All payments to the City shall be applied first to interest, then to reduce the principal amount owed.

9. Prior to the repayment in full of the City Loan, the Borrower shall not assign or attempt to assign the City Loan Agreement or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, except as permitted in the City Loan Agreement.

10. Subject to the provisions and limitations of this Section 10, the obligation to repay the City Loan is a nonrecourse obligation of the Borrower. Neither Borrower nor any general partner of Borrower shall have any personal liability for repayment of the City Loan, except as provided in this Section 10. The sole recourse of City against Borrower or any general partner shall be the exercise of its rights against the Property and any related security for the City Loan. Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by this Note or any of the City Loan Documents; (b) limit the right of the City to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Note and the City Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Borrower; (c) release or impair this Note or any of the City Loan Documents; (d) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing this Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing this Note; (f) relieve Borrower of any of its obligations under any indemnity delivered by Borrower to City; or (g) affect in any way the validity of any guarantee or indemnity from any person other than the Borrower of all or any of the obligations evidenced and secured by this Note or any of the City Loan Documents. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of an event of default after expiration of all applicable cure period, Borrower shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Borrower, its principals, shareholders, partners received rentals, other revenues, or other payments or proceeds in respect of the Property after the occurrence of such event of default after expiration of all applicable cure periods, which rentals, other revenues, or other payments or proceeds have not

been used for the payment of ordinary and reasonable operating expenses of the Property, ordinary and reasonable capital improvements to the Property, debt service, real estate taxes in respect of the Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, City may recover directly from Borrower or from any other party:

(A) any damages, costs and expenses incurred by City as a result of fraud or any criminal act or acts of Borrower or any general partner, shareholder, officer, director or employee of Borrower, or of any member or general partner of Borrower, or of any general or limited partner of such member or general partner;

(B) any damages, costs and expenses incurred by City as a result of any misappropriation of rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

(C) any and all amounts owing by Developer pursuant to the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity; and

(D) all court costs and reasonable attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that City shall pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in any such enforcement or collection action).

11. Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice. Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Note, any of the City Loan Documents, or any term or provision of either thereof.

12. Upon any event of default under the terms of this Note or any of the City Loan Documents, or any deed of trust securing a Senior Loan or other obligations secured by a deed of trust on the Property and after expiration of the applicable cure period, the holder may exercise its rights or remedies hereunder or thereunder.

13. (a) Subject to the extensions of time set forth in Section 14, and subject to the further provisions of this Section 14, failure or delay by Borrower to perform any material term or provision of this Note or any of the City Loan Documents, constitutes a default under this Note.

(b) City shall give written notice of default to Borrower, specifying the default complained of by the City. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by City 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.

Delays by City in asserting any of its rights and remedies shall not deprive City 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.

(d) If a monetary event of default occurs under the terms of this Note or any of the City Loan Documents, prior to exercising any remedies hereunder or thereunder City shall give Borrower and each of the general and limited partners of Borrower's partnership, as identified in Borrower's partnership agreement, simultaneous written notice of such default. Borrower shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by City under this Note and/or the City Loan Documents. In no event shall City be precluded from exercising remedies if its security becomes or is about to become materially impaired by any failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of any of the City Loan Documents, prior to exercising any remedies hereunder or thereunder, City shall give Borrower and each of the general and limited partners of Borrower's partnership, as identified in Borrower's partnership agreement, simultaneous notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Borrower shall have such period to effect a cure prior to exercise of remedies by the City under the City Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Borrower (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City.

(f) If Borrower fails to take corrective action or to cure the default within a reasonable time, City shall give Borrower and each of the general and limited partners of Borrower's partnership written notice thereof, whereupon the limited partner, subject to the terms of the Borrower's partnership agreement, may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The City agrees to accept cures tendered by any Senior Lender or the limited partner within the time period provided herein. Additionally, in the event the Senior Lender or limited partner is precluded from curing a non-monetary default due to an inability to remove the general partner as a result of a bankruptcy, injunction, or similar proceeding by or against the Borrower or its general partner, City agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or limited partner is so precluded from acting, not to exceed ninety (90) days, provided such Senior Lender and limited partner are otherwise in compliance with the foregoing provisions. In no event shall City be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received.

(g) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of

professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Borrower to the address set forth in the Loan Agreement; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof Notices to the limited partner shall be sent to the following address:

[Investor Limited Partner]

14. Notwithstanding specific provisions of this Note, Borrower shall not be deemed to be in default for failure to perform any non-monetary performance hereunder where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the City or any other public or governmental authority or entity, or any causes beyond the control or without the fault of the Borrower. An extension of time for any such cause (a “**Force Majeure Delay**”) 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 Borrower is sent to the City within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Borrower delivers to the City written notice describing the event, its cause, when and how Borrower obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Borrower shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Note may also be extended in writing by the City and Borrower.

15. If the rights created by this Note shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations shall be completely performed and paid.

16. The City Deed of Trust securing this Note and all other City Loan Documents have been made subordinate and junior to the claims, liens or charges of the Construction Loan deed of trust and all other instruments securing the Construction Loan by that certain Subordination Agreement by and among City, Borrower and Construction Lender which is being recorded concurrently with the execution and delivery of this Note and the recordation of the City Deed of Trust and will also be subordinate and junior to the claims, liens or charges of the Permanent Loan deed of trust and all other instruments securing the Permanent Loan. [language may need to be adjusted depending on senior financing terms]

17. City agrees that the lien of the City Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the “**Extended Use Agreement**”) recorded against the Project; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under the City Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall also apply: for a period of three (3) years from the date of

foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Borrower acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement shall be an event of default under this Note and the City Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees incurred by City as a result of an event of default by Borrower, and any amounts paid by City to cure any default under the Extended Use Agreement shall be an obligation of Borrower and become a part of the debt evidenced by this Note and secured by the City Deed of Trust.

18. In any approval, consent or other determination by City required under this Note or any of the other City Loan Documents, City shall act reasonably and in good faith.

19. Borrower shall have the right to prepay the obligation evidenced by this Note, or any part thereof, without penalty or premium.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF Borrower has executed this Note as of the day and year set forth above.

BORROWER:

Recording Requested by and
When Recorded Mail to:

CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

**SUBORDINATED LEASEHOLD DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)**

This Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) is made as of _____, 2019 by _____, a California limited partnership ("**Trustor**"), whose address is 470 S. Market Street, San Jose, California 95113, to Chicago Title Company ("**Trustee**"), for the benefit of the CITY OF SANTA CLARA, a public body, corporate and politic ("**Beneficiary**"), whose address is 1500 Warburton Avenue, Santa Clara, California 95050.

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust for the benefit of Beneficiary, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION the following property (the "**Trust Estate**"):

(a) That certain real property in the City of Santa Clara, County of Santa Clara, State of California more particularly described in Exhibit 1 attached hereto and by this reference made a part hereof (hereinafter referred to as the "**Subject Property**");

(b) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (the "**Improvements**");

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the "**Appurtenances**"). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the "**Real Property**");

(d) subject to the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or

otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the “**Rents**”);

(e) all present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the “**UCC**”), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor (the “**Goods**,” and together with the Real Property, the “**Property**”); and

(f) all present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the “**Intangibles**”).

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the “**Personal Property**”). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and

Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a “secured party” under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9313 and 9402(6) of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

- (1) due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:
 - (a) a promissory note in the original principal amount of \$_____, executed by Trustor (“**Borrower**” therein) of even date herewith (the “**City Note**”);
 - (b) the Loan Agreement dated as of _____ (the “**City Loan Agreement**”), between Trustor (“**Borrower**” therein) and Beneficiary (“**Lender**” therein);
 - (c) the City Loan Documents, as defined in the City Loan Agreement; and
- (2) payment of indebtedness of the Trustor to the Beneficiary in the principal sum of \$_____ (“**City Loan**”) or so much thereof as shall be advanced, evidenced by the City Note secured hereby, with interest, according to the terms of the City Note secured hereby.

The City Loan Documents, as described in the City Loan Agreement (collectively referred to as the “**Secured Obligations**”) and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby. Any capitalized term that is not otherwise defined in this Deed of Trust shall have the meaning ascribed to such term in the City Loan Agreement.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That Trustor shall pay the City Note secured hereby at the time and in the manner provided therein, and perform the obligations of the Trustor as set forth in the Secured Obligations at the time and in the manner respectively provided therein;
2. That Trustor shall not permit or suffer the use of any of the Trust Estate for any purpose other than the uses permitted by the Covenants;
3. Upon an Event of Default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;

4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the City Loan Agreement;

5. That upon an Event of Default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

6. That Trustor will keep the Improvements insured against loss by fire and such other hazards, casualties, and contingencies as described in the City Loan Agreement;

7. To pay, at least 10 days before delinquency, any taxes and assessments affecting said Property; to pay, when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as Trustor is contesting the legality thereof in good faith and by appropriate proceedings, and Trustor has adequate funds to pay any liabilities contested pursuant to this Section 7;

8. To keep said property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon without the consent of Beneficiary; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law and/or covenants, conditions and/or restrictions affecting said property; not to permit or suffer any material alteration of or addition to the buildings or improvements upon said property without the consent of the Beneficiary;

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee

being authorized to enter upon said property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees. Notwithstanding the foregoing, in the event of default under this Deed of Trust, the Beneficiary may also require Trustor to maintain and submit additional records. Beneficiary shall specify in writing the particular records that must be maintained and the information or reports that must be submitted;

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by the Beneficiary shall be added to the principal sum secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the City Note secured hereby;

13. That the funds to be advanced hereunder are to be used in accordance with the Secured Obligations and upon the failure of Trustor, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions, and agreements of said agreements, the principal sum and all arrears of interest, and other charges provided for in the City Note secured hereby shall at the option of the Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding;

14. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as permitted by the Secured Obligations or otherwise approved by Beneficiary, and further that it will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor shall, at Beneficiary's written request, within thirty (30) days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Recorder of Santa Clara County, a surety bond in an amount one-and-one-half (1 1/2) times the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary;

15. That any and all improvements made or about to be made upon the premises covered by this Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of the Beneficiary a reasonable charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, subject to the rights of the beneficiary of the Construction Loan Deed of Trust, the Permanent Loan Deed of Trust and any other obligation having a lien on the Property that is senior to the lien of this Deed of Trust ("**Senior Lender**"), Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. Subject to the rights of the Senior Lenders, all such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, shall be applied to the amount due under the City Note secured hereby. No amount applied to the reduction of the principal shall relieve the Trustor from making payments as required by the City Note secured hereby.

18. Upon and Event of Default by Trustor in making any payments provided for in the City Note secured hereby or in this Deed of Trust, or in performing any obligation set forth in any of the Secured Obligations, and if such default is not cured within the respective time provided therefor in Section 34 of this Deed of Trust, below, or the other Secured Obligations, whichever is longer, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust, the Authority Note and all documents evidencing expenditures secured hereby. Any cure made or tendered by the Investor Limited Partner shall be deemed a cure by the Trustor and shall be accepted or rejected on the same basis as if made by Trustor.

19. (a) Prior to the repayment in full of the City Loan, except as provided in the City Loan Agreement, the Trustor shall not assign or attempt to assign the City Loan Agreement or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, the improvements thereon, or any portion thereof or interest therein (referred to hereinafter as a "**Transfer**"), without prior written approval of the Beneficiary. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary shall not unreasonably withhold or delay its consent. If consent should be given, any such transfer shall be subject to this Section

19, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein.

(b) Any such proposed transferee shall have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the Beneficiary, to fulfill the obligations undertaken by Trustor in the City Loan Agreement and the City Loan Documents. Any such proposed transferee, by instrument in writing satisfactory to the Beneficiary and in form recordable among the land records of Santa Clara County, for itself and its successors and assigns, and for the benefit of the Beneficiary shall expressly assume all of the obligations of the Trustor under the City Loan Agreement and the City Loan Documents, and agree to be subject to all conditions and restrictions applicable to the Trustor in this Deed of Trust. There shall be submitted to the Beneficiary for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the Beneficiary its approval shall be indicated to the Trustor in writing.

(c) In the absence of specific written agreement by the Beneficiary, no unauthorized Transfer, or approval thereof by the Beneficiary, shall be deemed to relieve the Trustor or any other party from any obligations under the City Loan Agreement or any City Loan Document.

(d) Except for Permitted Transfers as described in the City Loan Agreement, in the event of a Transfer prior to the time the City Loan is paid in full without the prior written consent of the Beneficiary, the remaining principal balance of the City Loan and all accrued but unpaid interest shall be immediately due and payable.

(e) (i) As used herein, "Transfer" includes the sale, transfer or conveyance of the Property, the Improvements, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property or the Improvements; or the lease of all or substantially all of the Property or Improvements.

(ii) "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Trustor, or any conversion of Trustor to an entity form other than that of Trustor at the time of execution of this Deed of Trust, except for the following: (A) a cumulative change in the ownership interests of any individual limited liability company member of forty-nine percent (49%) or less shall not be deemed a "Transfer" for purposes of this Deed of Trust; and (B) a transfer of a portion or a majority of stock of any corporation to a trust formed in connection with a qualified employee ownership plan shall not, by itself, be deemed to constitute a change in ownership for purposes of this Deed of Trust.

(iii) "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of any general partner interest in Trustor if Trustor is a partnership

(iv) Notwithstanding anything to the contrary herein, a "Transfer" shall not include any "Permitted Transfer" as defined in the City Loan Agreement.

(f) The Beneficiary shall not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Any disapproval shall be in writing and contain the Beneficiary's reasons for disapproval.

20. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the City Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto.

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the City Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

24. The trust created hereby is irrevocable by Trustor.

25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term “Beneficiary” shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the City Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several.

26. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

27. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the following address:

470 S. Market Street
San Jose, California 95113
Attention: Christopher Neale

And to:

[Investor Limited Partner]

28. Trustor agrees that, except as otherwise provided in the City Note secured hereby, upon sale or refinancing of the property, the entire principal balance of the debt secured by this Deed of Trust, plus any accrued but unpaid interest thereon, shall at the option of Beneficiary be immediately due and payable.

29. Subject to the provisions and limitations of this Section 28, the obligation to repay the City Loan is a nonrecourse obligation of the Trustor. Neither Trustor nor any partner of Trustor shall have personal liability for repayment of the City Loan, except as provided in this Section 28. The sole recourse of Beneficiary shall be the exercise of its rights against the Property and any related security for the City Loan. Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by the City Note or this Deed of Trust; (b) limit the right of the Beneficiary to name Trustor as a party defendant in any action or suit for judicial foreclosure and sale under this Deed of Trust and the City Note or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Trustor; (c) release or impair the City Note or this Deed of Trust; (d) prevent or in any way hinder Beneficiary from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing the City Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder Authority from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds,

condemnation awards or other monies or other collateral or letters of credit securing the City Note; (f) relieve Borrower of any of its obligations under any indemnity delivered by Borrower to Authority; or (g) affect in any way the validity of any guarantee or indemnity from any person of all or any of the obligations evidenced and secured by the City Note and this Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of an Event of Default, Trustor shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Trustor, its principals, shareholders, partners or received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the Property, ordinary and reasonable capital improvements to the Property, debt service, real estate taxes in respect of the Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Trustor in connection with the operation of the Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, Beneficiary may recover directly from Trustor or from any other party:

(A) any damages, costs and expenses incurred by Beneficiary as a result of fraud or any criminal act or acts of Trustor or any general partner, shareholder, officer, director or employee of Trustor, or of any general or limited partner of such member or general partner;

(B) any damages, costs and expenses incurred by Beneficiary as a result of any misappropriation of funds provided for construction of the Improvements, rents and revenues from operation of the Improvements or proceeds of insurance policies or condemnation proceeds;

(C) any and all amounts owing by Trustor pursuant to the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity; and

(D) all court costs and reasonable attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Beneficiary shall pay Trustor's reasonable court costs and attorneys' fees if Trustor is the prevailing party in any such enforcement or collection action).

30. Notwithstanding specific provisions of this Deed of Trust, Trustor shall not be deemed to be in default for failure to perform any non-monetary performance hereunder where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the Beneficiary or any other public or governmental agency or entity, or any causes beyond the control or without the fault of the Trustor. An extension of time for any such cause (a "**Force Majeure Delay**") 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 Trustor is sent to the Beneficiary within ten (10) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Trustor delivers to the Beneficiary written notice describing the event, its cause, when and how Trustor obtained knowledge, the date and the event commenced, and the

estimated delay resulting therefrom. Trustor shall deliver such written notice within ten (10) days after it obtains actual knowledge of the event. Times of performance under this Deed of Trust may also be extended in writing by the Beneficiary and Trustor.

31. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor shall be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

32. (a) Subject to the extensions of time set forth in Section 29, and subject to the further provisions of this Section 31, failure or delay by Trustor to perform any material term or provision of this Deed of Trust or any of the other City Loan Documents constitutes a default under this Deed of Trust.

(b) Beneficiary shall give written notice of default to Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by Beneficiary 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. Delays by Beneficiary in asserting any of its rights and remedies shall not deprive Beneficiary 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.

(d) If a monetary event of default occurs under the terms of the City Loan Documents, or any deed of trust securing the Senior Loan or Permanent Loan prior to exercising any remedies hereunder or thereunder Beneficiary shall give Trustor written notice of such default. Trustor shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under the Authority Note and/or this Deed of Trust. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially impaired by any failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of the City Loan Documents, prior to exercising any remedies hereunder or thereunder, Beneficiary shall give Trustor notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Trustor shall have such period to effect a cure prior to exercise of remedies by the Beneficiary under the City Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is

about to become materially jeopardized by any failure to cure a default or the default is not cured within sixty (60) days after the notice of default is first given.

(f) If Trustor fails to take corrective action or to cure the default within a reasonable time, Beneficiary shall give Trustor and each of the general and limited partners of Trustor's partnership written notice thereof, whereupon the limited partner, subject to the terms of the Trustor's partnership agreement, may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The Beneficiary agrees to accept cures tendered by any Senior Lender or the limited partner within the time period provided herein. Additionally, in the event the Senior Lender or limited partner is precluded from curing a non-monetary default due to an inability to remove the general partner as a result of a bankruptcy, injunction, or similar proceeding by or against the Trustor or its general partner, Beneficiary agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or limited partner is so precluded from acting, not to exceed ninety (90) days, provided such Senior Lender and limited partner are otherwise in compliance with the foregoing provisions. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received.

(g) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Trustor; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

33. This Deed of Trust securing the City Note and all other City Loan Documents have been made subordinate and junior to the claims, liens or charges of the Construction Loan deed of trust and all other instruments securing the Construction Loan by that certain Subordination Agreement by and among Beneficiary, Trustor and Construction Lender which is being recorded concurrently with the execution and delivery of this Deed of Trust and will also be subordinate and junior to the claims, liens or charges of the Permanent Loan deed of trust and all other instruments securing the Permanent Loan.

34. This Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "**Extended Use Agreement**") recorded against the Project; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall also apply: for a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good

cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Trustor acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement shall be an event of default under this Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees incurred by Beneficiary as a result of an event of default by Trustor, and any amounts paid by Beneficiary to cure any default under the Extended Use Agreement shall be an obligation of Trustor and become a part of the debt evidenced by the City Note and secured by this Deed of Trust.

[Signatures appear on next page.]

IN WITNESS WHEREOF Trustor has executed this Deed of Trust as of the day and year set forth above.

“TRUSTOR”

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.

Signature _____ (Seal)

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.

On _____ before me, _____, (insert name and title of the officer)
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.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1

LEGAL DESCRIPTION

A leasehold estate in that certain Real Property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

[To be inserted.]