

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN 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
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Code Section 27383

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "**Assignment**") is made as of _____, 2019 by _____, a California limited partnership ("**Borrower**"), in favor of the CITY OF SANTA CLARA, its successors, and assigns (collectively, the "**City**").

RECITALS

A. Borrower is the owner of a leasehold interest in real property described in Exhibit A attached hereto, and the owner of all of the personalty, fixtures, and improvements now or hereafter located thereon or attached thereto now existing or to be constructed thereon. Said real property, personalty, fixtures, and the improvements are herein referred to collectively as the "**Premises**".

B. City has agreed to make a loan (the "**City Loan**") to Borrower, in the original principal amount of _____ Dollars (\$_____), pursuant to the terms of that Loan Agreement by and between Borrower and City dated as of _____ (the "**City Loan Agreement**"), as evidenced by promissory note of even date herewith (the "**City Note**"). The City Loan is secured by a Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing, of even date herewith, executed by Borrower, as Trustor, for the benefit of City, as Beneficiary (the "**City Deed of Trust**").

C. In order to induce City to make the City Loan to Borrower, Borrower has agreed to execute this Assignment.

NOW, THEREFORE, with reference to the foregoing and in reliance thereon and for good and valuable consideration, the receipt of which is hereby acknowledged, Borrower agrees as follows:

AGREEMENT

1. All initially capitalized terms used herein, unless otherwise defined or required by context, shall have the meaning ascribed to them in the City Loan Agreement. "Obligations" shall mean all obligations and duties of Borrower under the City Loan Documents. "**Indebtedness**" shall mean all monetary Obligations

2. Borrower hereby absolutely grants, sells, assigns, transfers, and sets over to City, by this Assignment, all of Borrower's interests, whether now existing or hereafter acquired, in all leases and other occupancy agreements of any nature, now or hereafter covering all or any part of the Premises, together with all extensions, renewals, modifications, or replacements of said leases and occupancy agreements, and together with any and all guarantees of the obligations of the lessees and occupants (the "**Lessees**") thereunder, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. (Said leases and occupancy agreements, together with any and all guarantees, modifications, extensions and renewals thereof, are hereinafter referred to collectively as the "**Leases**" and individually as a "**Lease**".) The term "Leases" shall exclude the Ground Lease.

3. Borrower's purpose in making this Assignment is to relinquish to City its right to collect and enjoy the rents, royalties, issues, profits, income, and other benefits at any time accruing by virtue of the Leases (hereinafter called "**Rents and Profits**").

4. The parties intend that this Assignment shall be a present, absolute and unconditional assignment, subordinate to the rights of the Senior Lender, and shall, immediately upon execution, give the City the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on the Indebtedness and other Obligations under the City Loan Documents, subject to the rights of the Senior Lender. However, the City hereby grants to Borrower a license to collect and use, subject to the provisions set forth below, the Rents and Profits as they respectively become due and to enforce the Leases, so long as there is no default by Borrower in performance of the terms, covenants, or provisions of the City Loan Documents, after the expiration of any applicable notice and cure periods. Nothing contained herein, nor any collection of Rents and Profits by City or by a receiver, shall be construed to make City a "mortgagee in possession" of the Premises so long as City has not entered into actual possession of the Premises.

5. Upon the occurrence of any default, after the expiration of any applicable notice and cure periods, under the terms and conditions of this Assignment and, this Assignment shall constitute a direction and full authority to each Lessee under any Lease and each guarantor of any Lease to pay all Rents and Profits to City without proof of the default relied upon. Borrower hereby irrevocably authorizes each Lessee and guarantor to rely upon and comply with any notice or demand by City for the payment to City of any Rents and Profits due or to become due.

6. Borrower represents and warrants as to each Lease now or hereafter covering all or any portion of the Premises, unless City has been otherwise advised in writing by Borrower:

- a. That each Lease is in full force and effect;

b. That no material default exists on the part of the Borrower or to Borrower's actual knowledge, Lessee;

c. That no rent in excess of one month's rent has been collected in advance;

d. That, except for assignments to the Senior Lender, no Lease or any interest therein has been previously assigned or pledged;

e. That, to Borrower's actual knowledge, no Lessee under any Lease has any defense, setoff or counterclaim against Borrower; and

f. That, except as disclosed on a rent roll delivered to the City under the City Loan Agreement, all rent due to date under each Lease has been collected and no concession has been granted to any Lessee in the form of a waiver, release, reduction, discount, or other alteration of rent due or to become due except as previously disclosed to Borrower in writing.

7. Borrower agrees with respect to each Lease:

a. If any Lease provides for a security deposit paid by the Lessee to Borrower, this Assignment transfers to City all of Borrower's right, title, and interest in and to each such security deposit; provided, however, that Borrower shall have the right to retain said security deposit so long as Borrower is not in default, after the expiration of any applicable notice and cure periods, under this Assignment or any other City Loan Document; and provided further that City shall have no obligation to the Lessee with respect to such security deposit unless and until City comes into actual possession and control of said security deposit.

b. If any Lease provides for the abatement of rent during repair of the leased premises by reason of fire or other casualty, Borrower shall furnish evidence of rental insurance to City, the policies to be with companies and in form, content, policy limits, and terms as are customary in the case of entities owning similar property or assets similarly situated.

c. Except as otherwise provided in the City Loan Agreement, Borrower shall not terminate any Lease (except pursuant to the terms of the Lease upon a default by any Lessee thereunder), or materially modify or amend any Lease or any of the terms thereof which have not been previously approved in writing by the City, which approval shall not be unreasonably withheld or delayed.

d. Except as otherwise provided in the City Loan Agreement, Borrower shall not hereafter execute any Lease, the terms and conditions of which have not been previously approved in writing by City, which approval shall not be unreasonably withheld or delayed.

e. Borrower shall not collect any Rents and Profits more than thirty (30) days in advance of the date on which they become due under the terms of any Lease, provided that Borrower may collect customary security deposits more than 30 days in advance.

f. Intentionally omitted.

g. Borrower shall not consent to any assignment of any Lease, or any subletting thereunder, whether or not in accordance with its terms, on any terms less favorable than those that would reflect an arm's length transaction in light of prevailing market conditions (subject to the rent restrictions applicable to the Premises), without the prior written consent of City, except as otherwise provided in the City Loan Agreement.

h. Except as otherwise provided in the City Loan Agreement, Borrower shall not execute any further assignment of any of the Rents and Profits or any interest therein or suffer or permit any such assignment to occur by operation of law.

i. Borrower shall not request, consent to, agree to, or accept a subordination of any Lease to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting the Premises or any part thereof, or suffer or permit conversion of any Lease to a sublease, without City's prior written consent.

j. Borrower shall faithfully perform and discharge all obligations of the lessor under each Lease, and shall give prompt written notice to City of any notice of Borrower's default received from any Lessee or any other person and furnish City with a complete copy of said notice. Borrower shall appear in and defend, at no cost to City, any action or proceeding arising under or in any manner connected with any Lease. If requested by City, Borrower shall enforce each Lease and all remedies available to Borrower against the Lessee in the case of default under the Lease by the Lessee.

k. All Leases entered into by Borrower shall be deemed included in this Assignment as though originally listed herein.

l. Nothing herein shall be construed to impose any liability or obligation on City under or with respect to any Lease. Borrower shall indemnify, defend, and hold City, its officers, directors, agents, employees, and representatives (the Indemnitees) harmless from and against any and all liabilities, losses, and damages that any Indemnatee may incur under any Lease or by reason of this Assignment, and of and from any and all claims and demands whatsoever that may be asserted against any Indemnatee by reason of any alleged obligations to be performed or discharged by City under any Lease or this Agreement, unless any of the foregoing arises from or results from the gross negligence or willful misconduct of any Indemnatee. Should any Indemnatee incur any liability, loss, or damage under any Lease or by reason of this Assignment and such liability, loss, or damage falls within the foregoing indemnification, Borrower shall immediately upon demand reimburse such Indemnatee for the amount thereof together with all costs and expenses and reasonable attorneys' fees (based on itemized invoices for time and charges) and court costs incurred by such Indemnatee. All of the foregoing sums shall bear interest at the maximum rate permitted by law from demand by Indemnatee until paid. Any Rents and Profits collected by City may be applied by City, in its discretion, in satisfaction of any such liability, loss, damage, claim, demand, cost, expense, or fees.

8. Subject to the rights of the Senior Lender, Borrower hereby grants to City the following rights:

a. Upon an Event of Default as defined in the City Loan Agreement, City shall be deemed to be the creditor of each Lessee in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership, or other debtor relief proceedings affecting such Lessee, without obligation on the part of City, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein.

b. City shall have the right to assign Borrower's right, title, and interest in the Leases to any subsequent holder of the City Deed of Trust or any participating interest therein or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise. Any subsequent City shall have all the rights and powers herein provided to City.

c. City shall have the right (but not the obligation), upon any Event of Default under the City Deed of Trust or the City Loan Agreement, to take any action as City may deem necessary or appropriate to protect its security, including but not limited to appearing in any action or proceeding and performing any obligations of the lessor under any Lease; and Borrower agrees to pay, on demand, all costs and expenses, including without limitation reasonable attorneys' fees and court costs incurred by City in connection therewith, together with interest thereon at the rate of ten percent (10%) per annum.

d. Upon any Event of Default under this Assignment, the City Deed of Trust, the City Note, the City Loan Agreement, or any other City Loan Document (subject to any notice and cure provisions), and without notice to or consent of Borrower, City shall have the following rights (none of which shall be construed to be obligations of City):

i. City shall have the right under this Assignment to use and possess, without rental or charge, the Fixtures, Equipment, and Personal Property of the Borrower located in or on the Premises and used in the operation or occupancy thereof. City shall have the right to apply any of the Rents and Profits to pay installments due for Personal Property rented or purchased on credit, insurance premiums on Personal Property, or other charges relating to Personal Property in or on the Premises. However, this Assignment shall not make City responsible for the control, care, management, or repair of the Premises or any Personal Property or for the carrying out of any of the terms or provisions of any Lease.

ii. City shall have the right to apply the Rents and Profits and any sums recovered by City hereunder to the outstanding Indebtedness, as well as to charges for taxes, insurance, improvements, maintenance, and other items relating to the operation of the Premises.

iii. City shall have the right to take possession of the Premises, manage and operate the Premises and Borrower's business thereon, and to take possession of and use all books of account and financial records of Borrower and its property managers or representatives relating to the Premises.

iv. City shall have the right to execute new Leases of any part of the Premises, including Leases that extend beyond the term of the City Deed of Trust.

v. City shall have the right to cancel or alter any existing Leases.

vi. City shall have the irrevocable authority, as Borrower's attorney-in-fact, such authority being coupled with an interest, to sign the name of Borrower and to bind Borrower on all papers and documents relating to the operation, leasing and maintenance of the Premises.

e. All of the foregoing rights and remedies of City are cumulative, and City shall also have upon the occurrence of any such default all other rights and remedies provided under the City Loan Documents, or otherwise available at law or in equity or by statute subject to the nonrecourse clause set forth in the City Note.

9. Failure of City to avail itself of any terms, covenants, or conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

10. Notwithstanding any future modification of the terms of the City Loan Documents, this Assignment and the rights and benefits hereby assigned and granted shall continue in favor of City in accordance with the terms of this Assignment.

11. This Assignment shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors, and assigns of the parties hereto (including without limitation in the case of City, any third parties now or hereafter acquiring any interest in the Indebtedness or other obligations of Borrower under the City Loan Documents or a part thereof, whether by virtue of assignment, participation, or otherwise). The words Borrower, City, and Lessee, wherever used herein, shall include the persons and entities named herein or in any Lease and designated as such and their respective heirs, legal representatives, successors and assigns, provided that any action taken by the named City or any successor, designated as such by an instrument recorded in the Official Records of Santa Clara County, California, referring to this Assignment, shall be sufficient for all purposes notwithstanding that City may have theretofore assigned or participated any interest in the obligation to a third party. All words and phrases shall be taken to include the singular or plural number, and the masculine, feminine, or neuter gender, as may fit the case.

12. Any change, amendment, modification, abridgment, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of City.

13. Upon payment and performance of all Obligations, as evidenced by a recorded satisfaction or release of the applicable City Deed of Trust, this Assignment shall be void and of no further effect.

14. All notices, demands, approvals, and other communications provided for in the City Loan Documents shall be in writing and be delivered to the addresses and in the manner set forth in the City Deed of Trust.

15. This Assignment may be recorded in the Official Records of Santa Clara County, California, and Borrower shall pay all fees, charges, costs, and expenses of such recording.

16. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

17. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

18. If City should bring any action to enforce its rights hereunder at law or at equity, Borrower shall reimburse City for all reasonable attorneys' fees and costs expended in connection therewith.

[Signatures begin on following page.]

IN WITNESS WHEREOF, the undersigned Borrower has executed this Assignment as of the date first above written.

“BORROWER”

[Signatures must be notarized.]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2019, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

EXHIBIT "A"
TO ASSIGNMENT OF RENTS AND LEASES

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.]

ASSIGNMENT OF AGREEMENTS

FOR VALUE RECEIVED, the undersigned, _____, a California limited partnership (the “**Borrower**”), assigns to the CITY OF SANTA CLARA (the “**City**”), all of its right, title and interest in and to:

1. All environmental, architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “**Architectural Agreements**”); and
2. All reports, studies, plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively “**Plans and Specifications**”)

heretofore or hereafter into or 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 on certain real property legally described in Exhibit 1 attached hereto and incorporated herein by this reference (collectively, “**Property**”). The Plans and Specifications, as of the date hereof, are those which Borrower has heretofore, or will hereafter deliver to City. The Architectural Agreements include, but are not limited to, the architectural contract between Borrower and _____.

This ASSIGNMENT OF AGREEMENTS (“**Assignment**”) constitutes a present and absolute assignment to City as of the Effective Date; provided, however, City confers upon Borrower the right to enforce the terms of the Architectural Agreements and Borrower’s rights to the Plans and Specifications so long as no event of default has occurred and is continuing after expiration of all applicable notice and cure periods under the Loan Agreement dated as of _____, between City and Borrower (the “**City Loan Agreement**”), as well as any future amendments and implementation agreements between Borrower and City which refer to this Assignment. Capitalized terms not otherwise defined herein shall have the meaning set forth in the City Loan Agreement. Upon the occurrence of an event of default and expiration of all applicable cure periods under the City Loan Agreement, City may, in its sole discretion, give notice to Architect of its intent to enforce the rights of Borrower under the Architect Agreements and of its rights to the Plans and Specifications and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Borrower acknowledges that by accepting this Assignment, City does not assume any of Borrower’s obligations under the Architectural Agreements or with respect to the Plans and Specifications.

Borrower represents and warrants to City, as of the Effective Date, that: (a) all Architectural Agreements entered into by Borrower are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural Agreements; (b) all copies of the Architectural Agreements and Plans and Specifications delivered to City are complete and correct; and (c) except for assignments to the Senior Lender Borrower has not assigned any of its rights under the Architectural Agreements or with respect to the Plans and Specifications.

Borrower agrees: (a) to pay and perform all obligations of Borrower under the Architectural Agreements; (b) to enforce the payment and performance of all obligations of any other person or entity under the Architectural Agreements; (c) not to materially modify the existing Architectural Agreements nor to enter into any future Architectural Agreements without City's prior written consent; and (d) except for assignments to the Senior Lender, not to further assign, for security or any other purposes, its rights under the Architectural Agreements or with respect to the Plans and Specifications without City's prior written consent.

This Assignment secures performance by Borrower of all obligations of Borrower under the City Loan Documents.

This Assignment shall be governed by the internal laws of the State of California, except to the extent that federal laws preempt the laws of the State of California, and Borrower consents to the jurisdiction of the Superior Court of the County of Santa Clara, State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorney's fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Borrower and City; provided, however, this shall not be construed and is not intended to waive any restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by Borrower contained in the City Loan Agreement.

The attached Architect's Consent, Schedule 1, and Exhibit 1 are incorporated by reference.

The Effective Date of this Assignment shall be the date it is executed by the Borrower.

[Signatures appear on following pages.]

“BORROWER”

ARCHITECT'S CONSENT

The undersigned architect ("Architect") hereby consents to the foregoing Assignment to which this Architect's Consent ("Consent") is part, and acknowledges that there presently exists no unpaid claims due to the Architect except as set forth on Schedule 1 attached hereto, arising out of the preparation and delivery of the Plans and Specifications to Borrower and/or the performance of the Architect's obligations under the Assignment.

Architect agrees that if, at any time, City shall become the owner of said Property, or, pursuant to its rights under the City Loan Agreement, elects to undertake or cause the completion of construction of the Project on any portion of the Property, in accordance with the Plans and Specifications, and gives Architect written notice of such election; then, so long as Architect has received, receives or continues to receive the compensation called for under the Architectural Agreements, City may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Agreements for the benefit and account of City in the same manner as if performed for the benefit or account of Borrower in the absence of the Assignment.

Architect further agrees that, in the event of a breach by Borrower of the Architectural Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as Borrower's interest in the Architectural Agreements and Plans and Specifications is assigned to City, Architect will give written notice to City of such breach at the address shown below. City shall have thirty (30) days from the receipt of such written notice of default to remedy or cure said default. Nothing herein shall require City to cure said default or to undertake completion of construction of the Project.

[Remainder of this page left intentionally blank.]

Except for an assignment to the Senior Lender, Architect warrants and represents that it has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Architectural Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

“ARCHITECT”

City’s Address:

CITY OF SANTA CLARA,
1500 Warburton Avenue
Santa Clara, California 95050

SCHEDULE 1

SCHEDULE OF UNPAID CLAIMS

Schedule 1 to the Assignment of Architectural Agreements and Plans and Specifications dated _____, 2019 between _____, as the Borrower, and the CITY OF SANTA CLARA, as City.

UNLESS LIST OF UNPAID CLAIMS IS OTHERWISE ATTACHED BEHIND THIS PAGE, NO UNPAID CLAIMS EXIST AS OF _____.

EXHIBIT 1

LEGAL DESCRIPTION

Exhibit 1 to the Assignment of Agreements dated _____, 201_ between _____, as the Borrower, and CITY OF SANTA CLARA.

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.]

OFFICIAL BUSINESS

Document entitled to free
recording per Government
Code Section 6103

Recording Requested By and
When Recorded Mail To:

CITY OF SANTA CLARA
Housing & Community Services Division
1500 Warburton Avenue
Santa Clara, California 95050
Attention: Division Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT CONTAINING COVENANTS

THIS AGREEMENT CONTAINING COVENANTS (this “**Agreement**”) is dated as of _____, 20____, by and between _____ (“**Developer**”), and THE CITY OF SANTA CLARA, a California municipal corporation (“**City**”).

WHEREAS, Developer holds a leasehold interest in the land located in the City of Santa Clara more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, and a fee interest in all improvements thereon (collectively, the “**Property**”); and

WHEREAS, for the purpose of providing 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 seniors (collectively the “**Senior Low and Moderate Income Households**”), using the income limits used for the Santa Clara MSA, as published approximately annually by the California Department of Housing and Community Development (“**HCD**”); and

WHEREAS, the Developer and City have entered into that certain Agreement Containing Covenants and Restrictions dated as of_____, 201__ (the “**Affordable Housing Agreement**”), which is incorporated herein by this reference (any capitalized term that is not otherwise defined in this Agreement shall have the meaning ascribed to such term in the Affordable Housing Agreement); and

WHEREAS, pursuant to the Affordable Housing Agreement, the City is providing financial assistance to Developer to assist in the acquisition and development of the Property, by providing funds to acquire the Property at a reduced price from the State of California, Department of General Services (“**State**”); and

WHEREAS, the Affordable Housing Agreement contains certain provisions relating to

the use of the Property.

NOW, THEREFORE, CITY AND DEVELOPER COVENANT AND AGREE AS FOLLOWS:

1. Maximum Incomes.

a. Developer covenants and agrees for itself, its successors and its assigns and every successor in interest to the Property or any part thereof, that Developer, its successors and assignees shall use the Property exclusively to provide affordable housing for Senior Low and Moderate Income Households, except for those units designated as the management unit(s) for the on-site manager(s) as reasonably determined by the City.

b. The maximum incomes of Senior Low and Moderate Income Households shall be determined on the basis of the income limits for extremely low, very low, low- and moderate income households in the Santa Clara MSA, published approximately annually by the California Department of Housing and Community Development (“HCD”).

2. – Maximum Rents.

a. The maximum rent, including a reasonable utility allowance for utilities and services (excluding telephone), shall not exceed rents that are affordable to Senior Low and Moderate Income Households under California Health and Safety Code section 50053. Affordable rent shall be based on area median income adjusted for family size appropriate to the unit, as determined by the California Department of Housing and Community Development. As used herein, the term “family size appropriate to the unit” shall equal the number of bedrooms in the unit plus one.

b. This requirement shall continue in effect for the Term of this Agreement.

c. In no event shall rents exceed the maximum rent permitted by tax credit regulations or the rules applicable to the use of Senior Low and Moderate Income Housing Fund moneys, whichever is the lowest.

3. No Discrimination. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, national origin, religion or sex in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property nor shall Developer 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.

4. Benefit and Term of Covenants. The covenants established in this Agreement and any amendments hereto approved by the City and the Developer shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, and the State of California, Department of General Services. The requirements of this Agreement shall remain in effect for 55 years from the issuance of the

permanent certificate of occupancy for the Senior Low and Moderate Income Households (the “**Term**”).

5. Enforcement. The City of Santa Clara, and the State of California, Department of General Services, are deemed beneficiaries of the terms and provisions of this Agreement and the covenants herein, both for and in their 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 and the State of California, Department of General Services, shall have the right, but not the obligation, if the covenants are breached, 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.

6. Transfers. The covenants and agreements contained herein shall run with the land and not be personal obligations of the Developer. Upon the sale, conveyance or other transfer of the Property approved by the City or otherwise permitted under the Affordable Housing Agreement or the Loan Agreement described therein (a “**Transfer**”) and the assumption of the obligations hereunder by a transferee, the Developer’s liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.

7. Subordination. The covenants and agreements contained herein shall not be subject to subordination unless the funding sources for the construction of the Improvements are required by law to be in a priority position. Should the covenants and agreements contained herein be subordinated, then if said covenants and agreements are terminated by foreclosure or otherwise, and the Property is not used for the Senior Low and Moderate Income Households, then pursuant to that certain Purchase and Sale Agreement dated July 5, 2005 by and between the City and the State of California, Department of General Services (“**State**” or “**Department**” therein) as amended by that certain First Amendment thereto dated December 13, 2011, as amended by that Agreement to Amend Post Closing Covenants and Modification of Grant Deed, dated as of December 19, 2016 (collectively, the “**Purchase Agreement**”), a public record on file in the offices of the City, City shall pay to the State the Additional Consideration (as defined therein) as if the total number of units subject to such foreclosure or other termination were included within the Market Rate Housing Element.

8. 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.

[Signatures begin on following page.]

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

CITY:

[Insert appropriate signature blocks]

[Signatures must be notarized.]

[Signatures continued following page.]

DEVELOPER:

[Insert appropriate signature block]

[Signatures must be notarized.]

Exhibit A

LEGAL DESCRIPTION

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

OFFICIAL BUSINESS

Document entitled to free
recording per Government
Code Section 6103

Recording Requested By and
When Recorded Mail To:

CITY OF SANTA CLARA
Housing & Community Services Division
1500 Warburton Avenue
Santa Clara, California 95050
Attention: Division Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS
(Affordable Housing Restrictions for Rental Units)**

THIS AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS (Affordable Housing Restrictions for Rental Units) (this "Agreement") is made by and between _____, a California limited liability partnership ("Developer"), and THE CITY OF SANTA CLARA, a California municipal corporation ("City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties". The City and the Developer agree as follows with reference to the following facts:

RECITALS

- A. Developer holds the leasehold interest in the land legally described on Exhibit A attached hereto ("Property"), and fee interest in the improvements located thereon or to be located thereon, including, without limitation, 165-units of rental housing to be constructed on the Property (the "Project").
- B. The City is providing a loan to Developer in the amount of \$15,700,000 (the "City Loan") pursuant to that certain Loan Agreement between the City and the Developer of even date herewith (the "Loan Agreement") and the City Loan Documents (such term and other capitalized terms not defined herein shall have the meanings given to them in the Loan Agreement).
- C. Developer accepts responsibility for meeting the provision of one hundred sixty-five (165) affordable rental housing units within the Project. The one hundred sixty-five (165) affordable rental housing units shall be provided in the Project according to the terms herein stated. The affordable rental housing units shall be allocated as follows: (a) 59 units to be leased to 30% AMI Households; (b) 55 units to be leased to 40% AMI Households; (c) 17 units to be leased to 50% AMI Households; (d) 32 units to be leased to 80% AMI

Households; and (e) 2 units to be leased to 120% AMI Households, provided that units to be leased to 120% AMI Households may be used as one or more resident apartment manager's units to the extent required under applicable law (the "Management Unit(s)"). Each 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 Units.

- D. All one hundred sixty-five (165) proposed affordable rental housing units shall be made available at Below Market Rate Rents (as defined below).
- E. It is the intention of the City and Developer to set forth and apply these covenants, conditions and restrictions to satisfy the condition of approval of the Project.

NOW, THEREFORE, in consideration of valuable land use and economic benefits and approvals by City allowing development of the Project and to satisfy its obligations to provide affordable housing for Income-Qualified Households at rent Below Market Rate Monthly Rent, the Developer and City hereby agree that the Project shall be subject to the following covenants and conditions which shall run with the land, and be binding on all parties having any right, title or interest in Project, their respective heirs, legatees, devisees, administrators, executors, successors and assigns, and shall inure to the benefit of the City and their respective successors and assigns.

1. Definitions

In addition to terms that are otherwise defined herein, the following terms shall have the following respective meanings:

"30% AMI Household(s)" shall mean 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)" shall mean 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)" shall mean 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)" shall mean 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)" shall mean 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.

"Affordable Housing Cost" shall mean a monthly rent plus a reasonable utility allowance that does not exceed the following:

- (a) For a 30% AMI Household, the product of thirty percent (30%) times thirty percent (30%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (b) For a 40% AMI Household, the product of thirty percent (30%) times forty percent (40%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (c) For a 50% AMI Household, the product of thirty percent (30%) times fifty percent (50%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (d) For an 80% AMI Household, the product of thirty percent (30%) times eighty percent (80%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (e) For a 120% AMI Household, the product of thirty percent (30%) times one hundred twenty (120%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).

“Affordability Period” shall mean the length of time that this recorded agreement and tenant incomes and rents for the Affordable Housing Units are limited, as described below. This period shall be for fifty-five (55) years from Conversion, as such term is defined in the Loan Agreement.

“Affordable Housing Unit(s)” shall mean each and all of the dwelling units in the Project, allocated as provided in Exhibit B attached hereto and incorporated hereby, to be occupied or made available for occupancy exclusively to Income-Qualified Households, provided that Units to be leased to 120% AMI Households may be used as Manager’s Units.

“AMI” shall mean the median family income figures and standards (adjusted for actual Household size) (I) utilized by TCAC as to 30% AMI Households, 40% AMI Households, 50% AMI Households, and 80% AMI Households; and (II) utilized by HCD pursuant to California Health and Safety Code Section 50093 as to 120% AMI Households or the calculation of 140% of AMI.

“Annual Income” shall mean the annual income limits (adjusted for actual Household size) (I) utilized by TCAC as to 30% AMI Households, 40% AMI Households, 50% AMI Households, and 80% AMI Households; and (II) utilized by HCD as to 120% AMI Households or the calculation of 140% of AMI.

“Below Market Rate” shall mean the provision of a dwelling unit at rent levels less than market rates.

“Below Market Rate Monthly Rent” shall mean, for purposes of this Agreement, the applicable Affordable Housing Cost less the Utility Allowance.

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

“HCD” shall mean the California Department of Housing and Community Development.

“Household” shall mean one or more persons occupying a housing unit.

“Income-Qualified Household(s)” shall mean a 30% AMI Household, 40% AMI Household, 50% AMI Household, 80% AMI Household and/or 120% AMI Household, as applicable.

“Monitoring Fee” means a fee of One Hundred Dollars (\$100) per Unit (which shall be increased by three percent (3%) per annum on each June 30, commencing with the June 30 following the calendar year in which Conversion occurs) to be paid annually by Developer to the City in accordance herewith.

“TCAC” shall mean the California Tax Credit Allocation Committee.

“Unit(s)” shall mean all dwelling units in the Project.

“Unit Allocation” shall mean the allocation of the Units in the Project to Income-Qualified Households as provided in Exhibit B attached hereto and incorporated hereby.

“Utility Allowance” shall be based upon schedules issued from time to time by the Santa Clara County Housing Authority. The Utility Allowance applies to all tenant-paid costs that are listed on that schedule.

2. Uses

- a. General. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that the Developer shall use the Project only for residential operation pursuant to all of the terms and conditions of this Agreement. The Project shall consist of 165 Units, all of which shall be Affordable Housing Units for Income-Qualified Households, provided that Units to be leased to 120% AMI Households may be used as Manager’s Units.
- b. Affordability Covenants. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, during the Affordability Period, that all rental Units in the Project shall be rented or leased to or held available for rental or occupancy by Income-Qualified Households.

(1) Units Generally.

- (a) One-Hundred Sixty Five (165) of all the Units at the Project shall be designated as Affordable Housing Units and shall be occupied or held available for occupancy by Income-Qualified Households on a continuous basis for the Affordability Period, provided that Units to be leased to 120% AMI Households may be used as Manager’s Units, as provided in the Unit Allocation.

- (b) The Units shall be rented and lease in accordance with the Unit Allocation.

- (c) If Developer implements periodic programs of replacement and upgrade which apply to all Units, all Affordable Housing Units in Project shall be included within such programs and shall be treated under such programs in a manner substantially similar to all other units.
- (d) Each Unit is to be leased to a “senior citizen”, as defined in Civil Code Section 51.3(b)(1).
- (e) Veterans shall be given a preference to lease 30% of the Units.

(2) Affordable Housing Unit Rents

- (a) Developer agrees it shall not charge or collect from any tenant of an Affordable Housing Unit a monthly amount in exchange for occupancy of the Affordable Housing Unit that exceeds the Below Market Rate Monthly Rent applicable to the Affordable Housing Unit. Notwithstanding the foregoing, nothing in this Agreement prohibits Developer from charging tenants of any Affordable Housing Unit any fees or charges which are for services or items that the tenant of the Unit voluntarily signs up for and which are available to all tenants at the Project, and the amount of such fees will be in addition to Below Market Rate Monthly Rent.
- (b) The Below Market Rate Monthly Rent for the Affordable Housing Units shall be based upon schedules issued from time to time by HUD and modified and published by TCAC and HCD. Upon written request, City shall notify the Developer of the applicable AMI and Annual Income based on number of bedrooms.
- (c) Rent increases, which may occur not more frequently than annually, shall not exceed the annual increase, if any, in AMI. In no case may Below Market Rate Monthly Rents for the Affordable Housing Units exceed the amount derived by the Below Market Rate Monthly Rent formula set forth in this Agreement. The City shall receive a copy of all rent increase notices for the designated Affordable Housing Units at least 30 days prior to the new rents taking effect. Rent increases may only be implemented in compliance with applicable law.

(3) Income Qualification of Affordable Housing Unit Tenants

- (a) Developer shall establish and maintain a file for each tenant residing in an Affordable Housing Unit including, at minimum, documents identified below. Developer shall make a good faith effort to verify that the income provided by an applicant in an income certification is accurate.
- (b) The income of each Affordable Housing Unit tenant must be determined and certified prior to occupancy of that unit, using the applicable Annual Income. The Developer may certify initial income qualification using one of the following two source documentation methods:

- (i) Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines each year the annual income of the household; or
- (ii) Examine the source documents evidencing annual income for the household. Developer shall use good faith efforts to obtain all applicable source documents to include in the tenant's file: pay stub for the most recent pay period; Income tax return for the most recent tax year; Income verification form from the applicant's current employer; income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of those agencies; and, any statement documenting unearned income received by the household.
- (c) Annually, Developer shall determine the income of all tenants residing in an Affordable Housing Unit. Developer may choose to use either of the two methods described above or may obtain from the household a written statement of the amount of the Household's income and family size along with a signed certification by the tenant that the information is complete and accurate. The certification must state that the household will provide source documentation upon request.
- (d) Income limits, adjusted for household size, will be based off of the AMI for Santa Clara County, which is published periodically by TCAC and HCD. Upon request, City shall notify the Developer of the applicable area median income limits.

(4) Over-Income Tenants in Affordable Housing Units

- (a) If a Household of an Affordable Housing Unit no longer qualifies as an Income-Qualified Household at the AMI level which such Household initially qualified (the "Initial AMI Level") for occupancy due to an increase in income but qualifies as an Income-Qualified Household at a higher AMI level, the Household may continue to occupy the Affordable Housing Unit and shall be treated as an Income-Qualified Household under such higher AMI level; provided, however, Developer shall rent the next available comparable unit within the Project (i.e., same number of bedrooms and bathrooms) as an Affordable Housing Unit to an Income-Qualified Household that qualifies as an Income-Qualified Household at the Initial AMI Level. If an occupant of an Affordable Housing Unit no longer qualifies as an Income-Qualified Household due to an increase in income, the occupant may continue to occupy the former Affordable Housing Unit; provided, however, Developer may increase the rental rate for such former Affordable Housing Unit to market rate. Developer shall send written notice to the Housing Authority with the address and bedroom/bathroom mix of any occupant that pays rent greater than the equivalent Affordable Rent for an Income-Qualified Household under Section 2.01(b).

(5) Waiting List for Affordable Housing Units

- (a) Developer shall maintain a written Waiting List of households that have contacted Developer and expressed an interest in an Affordable Housing Unit. That list shall include appropriate contact information for notifying the interested households when a vacancy in an Affordable Housing Unit occurs. Names on the Waiting List will be listed in order of the date of receipt of notice of interest and contact information from the prospective applicant. This Waiting List will be kept in Developer's offices and shall be available for City review with reasonable notice.
- (b) Subject to Developer's use and application of its customary leasing criteria that is applied to all tenants at the Project (including, without limitation, credit checks, references, etc.), Developer shall select new tenants for the Affordable Housing Units in chronological order (oldest listing first). Developer shall provide evidence of attempts to contact households on the Waiting List.

(c) [Any required City, County or Housing Authority waiting list requirements?]

(6) Lease Provisions

- (a) A copy of the Project's standard lease form(s) shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes.
- (b) The lease may not contain any terms prohibited by applicable law.
- (c) Each lease or rental agreement shall provide that the Developer will not discriminate on the basis of race, creed, color, sex, national origin, ancestry, religion, marital status, disability or receipt of public assistance or housing assistance in connection with the rental of a Unit in Project, or in connection with the employment or application for employment of persons for operation and management of Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect.
- (d) The Developer shall not require rental deposits in excess of one-month's rent for any Affordable Housing Unit, but may require refundable deposits for pet damages, and keys, and similar items, consistent with applicable laws.
- (e) The Developer shall include provisions in leases or rental agreements for all Affordable Housing Units which authorize the Developer to immediately terminate the tenancy of any tenant occupying an Affordable Housing Unit where one or more of such tenants have misrepresented any fact material to the qualification of such an individual or household as an Income-Qualified Household, including, but not limited to, persons 18 years of age and older that reside in the household that are not listed on the lease. Each lease or rental agreement for an Affordable Housing Unit shall also provide that the tenants of such Affordable Housing Unit shall be subject to annual certification or recertification of income, as required by the City, and shall be subject to rental increases in accordance with this Agreement.

- (f) The provisions relating to certification and re-certification of income in the form of lease or rental agreement used by the Developer for the lease or rental of the Affordable Housing Units shall be subject to prior review and approval by the City, the approval of which shall not be unreasonably withheld or delayed.

(7) Initial Leasing, Marketing and Tenant Selection Procedures.

- (a) Not later than sixty (60) days prior to the commencement of marketing, Developer shall prepare and submit to the City for reasonable approval a marketing and outreach program for the Affordable Housing Units which shall contain, among other things: (i) how a potential Income-Qualified Household would apply to rent an Affordable Housing Unit in the Project, including where to apply, applicable income limits and rent levels; (ii) a description of procedures and media Developer will use to publicize vacancies in Project, including notice in newspapers of general circulation, at least one of which shall be a foreign language newspaper; (iii) provide monthly leasing reports until all Units have been leased up and occupied, and (iv) mailing notices of vacancies to or contacting by telephone potential tenants on the Waiting List maintained by Developer.
- (b) A copy of Developer's standard tenant selection procedure, applicable to all Units in Project, shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes. Any special procedures related to tenant selection for an Affordable Housing Unit shall be specified and are limited to procedures reasonably related to implementation of the requirements of this Agreement and in compliant with State Fair Housing regulations
- (c) Developer must give prompt, written notice to any rejected applicant for an Affordable Housing Unit, specifying the grounds for rejection.
- (d) Operating Covenant Agreement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to Project or any part thereof that Developer, shall operate Project in conformity with all applicable laws, rules, regulations and ordinances, including without limitation, all applicable federal and state labor standards.
- (e) Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, ancestry, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Project or any part thereof, nor shall the Developer 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, sub-lessees, or vendees of Project.
- (f) Form of Non-discrimination and Non-segregation Clauses. The Developer shall refrain from restricting the rental, sale or lease of Project on the basis of race,

color, religion, ancestry, national origin, sex, or marital status of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:

(1) In deeds: “The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, 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, sub-lessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land”.

(2) In leases: “The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, 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 race, color, religion, ancestry, national origin, sex, or marital status in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, 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, sub-lessees, subtenants, or vendees in the land herein leased.”

(3) In contracts: “There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sub-lessees or vendees of the land.”

3. Monitoring/Annual Report

- (a) Not later than ten (10) days prior to the commencement of marketing, Developer shall assign a single person as Project Manager, who shall have overall responsibility for the progress and execution of this Agreement. Subsequent to that assignment, Developer shall notify City of any change in the name and/or contact information of the Project Manager.

- (b) Once leasing at the Project has commenced, the Developer for itself, its successors, its assigns and every successor in interest to Project or any part thereof, covenants and agrees to submit to the City an annual report (the “Annual Report”). The first Annual Report shall be due 1 year after leasing at the Project has commenced. The Annual Report format shall be approved by the Housing & Community Services Division Manager and shall include a signed and certified statement of its accuracy upon annual submission to the City.
- (c) The Developer shall submit the Annual Report on or before September 30 of each year following the fiscal year (Period July 1 to June 30) covered by the Annual Report and a certified statement by Developer that to the knowledge of the Developer, no default has occurred under the provisions of this Agreement.
- (d) The City has a standard reporting form which consists of two parts: Part I, information on tenants in residence on June 30 of the reporting year; Part II, information on tenants who moved in and out during the reporting year. The City has a standard form for income/rent reporting. A reasonable facsimile, pre-approved by the City may be substituted as long as it contains all the required information. For each Affordable Housing Unit, the following information is required (based on tenants in residence as of June 30):
 - (1) Apartment Number or other unit designation.
 - (2) Number of bedrooms.
 - (3) Household Size.
 - (4) Tenant Income (certified annually).
 - (5) Tenant-Paid Rent.
- (e) Developer shall provide, within thirty (30) days of request, additional information concerning the Affordable Housing Units and/or Unit Allocation reasonably requested by the City in writing. The City shall have the right to examine and make copies of all books, records or other documents maintained by Developer or by any of Developer's agents that pertain to any Affordable Housing Unit and/or this Agreement.
- (f) Commencing with Conversion, Developer shall pay City on an annual basis, due on the same date as the Annual Report, the Monitoring Fee, provided that the Monitoring Fee shall be reduced (but not below \$0) to the extent that Developer has actually paid a monitoring fee to the County of Santa Clara.

4. Enforcement

The City of Santa Clara is deemed to be the 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 any covenants set forth in this Agreement are breached, to exercise all available 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 is entitled. No remedy herein conferred upon or reserved by the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient. In order to entitle the City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

Developer agrees that, if a breach is not cured within thirty (30) days after written notice by City is provided to Developer, or if such breach cannot be reasonably cured within the thirty (30) day period and Developer has not commenced the curing of such Default, then City shall have all rights and remedies at law or in equity to enforce the curing of such Default.

Additionally, if Developer collects rents from Income-Qualified Households occupying the Affordable Housing Units that require such Income-Qualified Household tenants to pay rent in excess of what is permitted pursuant to this Agreement, and to the extent such excess rents are not required to be reimbursed to the tenants of such Affordable Housing Units, Developer agrees and covenants to pay to the City the full amount of such excess to the City within ten (10) business days of City's written demand. Developer and City agree that the payment of such excess rent shall be in addition to City's rights and remedies at law or equity, and shall not constitute a repayment of or payment on the City Loan.

If the City provides Developer with a written notice of violation of this Agreement and Developer has not cured or responded to such notice of violation within ninety (90) days, then in addition to City's rights and remedies set forth herein, City shall thereafter have the right to impose a fine of \$150 per month per Unit until Developer has cured or responded to the notice of violation. Developer shall pay such fine within thirty (30) days of City's written demand.

5. Defaults

Failure or delay by Developer to perform any material obligation set forth in any term or provision of this Agreement constitutes a default.

- (a) The City shall give written notice of default to the Developer, specifying the default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.
- (b) Any failures or delays by the 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 the City in asserting any of its rights and remedies shall not deprive the 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.

- (c) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, City shall give Developer notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Developer shall have such period to effect a cure prior to exercise of remedies by the City. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Developer (1) initiates corrective action within said period, and (2) diligently and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City. In no event shall City be precluded from exercising remedies if its remedies become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the notice of default is first given.
- (d) Developer shall not be in Default where Developer's performance under this Agreement is affected by force majeure. In the context of these terms and conditions, "force majeure" is any event that the Developer could not, even with due care, reasonably foresee or avoid. These events include but are not limited to war, threat of war, riot, civil commotion or strife, hostilities, industrial dispute, natural disaster, fire, acts of god, terrorist activity, nuclear disaster, adverse weather, government action, City caused delays, delays caused by third parties, technical problems with transportation or other events outside the Developer's control.

6. Indemnification

The Developer shall indemnify, hold harmless and defend the City, and its officers, officials, appointees, employees and agents from and against (a) any Default by Developer under this Agreement; (b) any and all loss, costs, damages, actions and liabilities of whatever nature directly or indirectly resulting from or arising out of the design, construction, occupancy or ownership of Project or any written statement or representation provided to the City, or to prospective or actual tenants or purchasers of Project with respect to the Developer's performance hereunder. The foregoing obligations of Developer shall exclude claims, loss, costs, damages, actions and liabilities to the extent arising from City's gross negligence, willful misconduct or breach of this Agreement by the City. If any such claim is asserted, or any such impositions or charges are sought to be imposed, the City shall give prompt notice to Developer and Developer shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise and settle the same in its sole discretion, provided that the City shall have the right to review and reasonably approve or disapprove any such settlement or compromise if (1) such settlement or compromise would require the City to pay any money in connection with such settlement; or (2) the City would remain a litigant after such settlement or compromise is entered into. In addition, Developer shall pay upon demand all of the reasonable expenses paid or incurred by City in enforcing the provisions hereof.

7. General Provisions

(a) City as Beneficiaries

- (1) All covenants and conditions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City against the Developer and its heirs, legatees, devisees, administrators, executors, successors and assigns.
- (2) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the City shall be deemed beneficiary of the covenants provided for in this Agreement, both for and in its own right and also for the purposes of protecting the interests of the community. All covenants set forth herein without regard to technical classification or designation, shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. City shall have the right, in the event of any material breach of any such covenant or condition, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of covenant or condition. There are no intended third party beneficiaries of this Agreement.

(b) Irrevocability; Term of Agreement

This Agreement shall be irrevocable by the Developer, its successors and assigns to the Property or any portion thereof. The covenants against discrimination set forth above shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the Affordability Period.

(c) Amendment of Agreement

Only the City, its successors and assigns, and the Developer, and the heirs, legatees, devisees, administrators, executors, successors and assigns of the Developer in and to the fee title to Project (or portion thereof) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or conditions contained in this Agreement, or to subject the Property or any Affordable Housing Unit to additional covenants or conditions, without the consent of any renter, lessee, easement holder, licensee, or any other person or entity having an interest less than a fee in Project (or portion thereof) or any Affordable Housing Unit.

(d) Severability

The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

(e) Interpretation

The provisions of this Agreement shall be liberally construed and interpreted to effectuate its purposes. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

(f) Applicable Law

This Agreement and the lien created hereby shall be governed by and construed according to the laws of the State of California.

(g) Number, Gender and Headings

As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.

(h) Notices

Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a “hard” copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service) to the principal offices of the City and the Developer, as follows:

If to the City:

City of Santa Clara
Housing & Community Services Division
1500 Warburton Avenue
Santa Clara, California 95050
Attn: Division Manager

If to the Developer:

With a copy to:

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.

(i) Rights and Remedies Are Cumulative

The rights and remedies of the City with respect to the enforcement of the obligations contained in this Agreement are cumulative, and the exercise by the City 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 hereunder.

(j) Dispute Resolution

- (1) Any controversies between the City and Developer regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one party after the service of that request on the other party.
- (2) The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The parties may agree to extend the time allowed for mediation under this Agreement.
- (3) The costs of mediation shall be borne by the parties equally.
- (4) Mediation under this Section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys' fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

(k) Counterparts

This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

- (l) Mortgagee Protection. No breach of this Agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against the Project. No lender taking title to the Project through foreclosure or deed in-lieu of foreclosure shall be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of the Project by such lender. Any lender who has recorded a deed of trust or mortgage against the Project shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City's notice. No lender who takes title to the Project through foreclosure or deed in-lieu of foreclosure shall be obligated to construct or continue with construction of the Project.

[Remainder of page left intentionally blank.]

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA,
a chartered California municipal
corporation**

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager

ATTEST:

NADINE NADER
Acting City Clerk

[SIGNATURES MUST BE NOTARIZED]

DEVELOPER:

[signature block]

[SIGNATURES MUST BE NOTARIZED]

DRAFT

EXHIBIT 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]

DRAFT

EXHIBIT B

UNIT ALLOCATION

	30% AMI Household(s)	40% AMI Household(s)	50% AMI Household(s)	80% AMI Household(s)	120% AMI Household(s) or Manager
Studio					
1 bedroom					
2 bedrooms					
3 bedrooms					
4 bedrooms					
Total	59	55	17	32	2

COMPLETION GUARANTY

This **COMPLETION GUARANTY** (this “**Guaranty**”) is entered into as of _____, 201_, by [guarantor(s)] (“**Guarantor**”, whether one or more), for the benefit of Beneficiary Parties (as defined below). The date of this Guaranty as set forth above is for reference purposes only, and this Guaranty will not be effective and binding until the initial funding of the Loan (as defined by the Loan Agreement).

RECITALS:

A. [borrower] (the “**Borrower**”) is obtaining from the City of Santa Clara (the “**Lender**”) a loan (the “**Loan**”) for the acquisition, construction, development, equipping and/or operation of a 165-unit residential project and open, common and agricultural space and certain other improvements to be located in the City of Santa Clara, known or to be known as [Agrihood] (the “**Property**”).

B. Simultaneously with the execution of this Guaranty and as a part of the same transaction, the Borrower has executed and delivered to the Lender the Note in the maximum principal amount of \$15,700,000, together with the other Loan Documents (each as hereinafter defined), which are intended to evidence and secure the Loan.

C. The Loan is secured by, among other things, that certain Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) and that certain Assignment of Rents and Leases (collectively, the “**Security Instrument**”), dated as of the date hereof, encumbering the Borrower’s interest in the property described in the Security Instrument, and will be advanced to Borrower pursuant to that Loan Agreement certain Loan Agreement (“**Loan Agreement**”) dated as of the date hereof between Borrower and Lender (the Note, the Security Instrument, the Loan Agreement and all other documents executed in connection with the Loan, including this Guaranty, are collectively referred to as the “**Loan Documents**”).

D. The term “**Beneficiary Parties**” as used herein shall mean Lender and its successors and assigns. The term “Beneficiary Parties” shall also include any lawful owner, holder or pledgee of the Note.

E. As a condition to the making of the Loan, Beneficiary Parties require that Guarantor execute this Guaranty.

F. Guarantor will directly or indirectly derive a material financial benefit from the making of the Loan.

NOW, THEREFORE, in order to induce Lender to make the Loan to Borrower, and in consideration thereof, Guarantor agrees as follows:

1. **Defined Terms.** Capitalized terms used but not defined in this Guaranty shall have the meanings assigned to them in the Security Instrument.

2. **Scope of Guaranty.** Guarantor represents to Beneficiary Parties that Guarantor has a direct or indirect ownership in Borrower and/or will otherwise derive a material financial benefit from the making of the Loan. Guarantor hereby does jointly, severally and unconditionally guaranty to Beneficiary Parties the following (collectively, the “**Guaranteed Obligations**”):

(a) that Borrower will complete all construction and/or development of the Improvements and all other work required under the Loan Agreement (collectively, the “**Work**”) in all respects and pursuant to the Scope of Development and Schedule of Performance set forth in the Loan Agreement, in accordance with and in the manner set forth in such documents and in accordance with any Plans and Specifications or scope of work and budget approved by Lender (subject to any changes thereto permitted by the Loan Agreement);

(b) that in the event that the sum of the proceeds of the Loan available for disbursement together with any other sources to complete the Work are, or at any time become, in the judgment of Lender, insufficient to pay all costs of acquisition of the Property and for the completion of the Work in accordance with the Loan Agreement, then Borrower will pay the costs of such Work as provided for in the Loan Agreement;

(c) that Borrower will pay and discharge, or otherwise release, all mechanic’s and materialmen’s liens or claims therefor imposed or alleged against the Property to the end that there shall be no mechanic’s, materialmen’s or other like liens or claims outstanding against the Property; and

(d) that Borrower shall cause the Work at all times to comply with all applicable existing building, zoning, use and environmental protection laws and ordinances as may be necessary to enable the use and occupancy of the Property for its intended purposes.

If Borrower shall fail to duly and punctually perform and observe any of the Guaranteed Obligations, then Guarantor forthwith upon demand by Beneficiary Parties or its designee will themselves, at their own expense, do, promptly perform and observe such Guaranteed Obligations. In the case of any payment to be made by Guarantor, such payment shall be made within five (5) days following demand therefor, and any amounts not paid within such time shall accrue interest at the Default Rate (as defined in the Note) from the earlier of the date of demand therefor or such other date as may be provided under the Loan Documents.

3. **Guarantor’s Obligations Survive Foreclosure.** The obligations of Guarantor under this Guaranty shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the Security Instrument or the other Loan Documents.

4. **Guaranty of Payment and Performance.** Guarantor’s obligations under this Guaranty constitute an unconditional and continuing guaranty of payment and performance and not merely a guaranty of collection. Guarantor hereby irrevocably and unconditionally covenants and agrees that Guarantor is liable for the Guaranteed Obligations as a primary

obligor. The Guaranteed Obligations and this Guaranty are separate, distinct and in addition to any liability and/or obligations that Borrower or Guarantor may have under any other guaranty or indemnity executed by Borrower or Guarantor in connection with the Loan, and no other agreement, guaranty or indemnity executed in connection with the Loan shall act to reduce or set off any of Guarantor's liability hereunder.

5. **Unconditional Guaranty.** The obligations of Guarantor under this Guaranty shall be performed without demand by Beneficiary Parties and shall be unconditional irrespective of the genuineness, validity, regularity or enforceability, in whole or in part, of the Guaranteed Obligations, the Note, the Security Instrument or any other Loan Document, and without regard to any other circumstance which might otherwise constitute a legal or equitable discharge of a surety, a guarantor, a borrower or a mortgagor. Guarantor hereby waives the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty and agrees that Guarantor's obligations shall not be affected by any circumstances, whether or not referred to in this Guaranty, which might otherwise constitute a legal or equitable discharge of a surety, a guarantor, a borrower or a mortgagor. Guarantor hereby waives the benefits of any right of discharge under any and all statutes or other laws relating to a guarantor, a surety, a borrower or a mortgagor, and any other rights of a guarantor, a surety, a borrower or a mortgagor, thereunder. Without limiting the generality of the foregoing, Guarantor hereby waives, to the fullest extent permitted by law, presentment, demand for payment, protest, all notices with respect to the Loan Documents and this Guaranty which may be required by statute, rule of law or otherwise to preserve Beneficiary Parties' rights against Guarantor under this Guaranty, including, but not limited to, notice of acceptance, notice of any amendment of the Loan Documents, notice of the occurrence of any default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest, and notice of the incurring by Borrower of any obligation or indebtedness. Guarantor also waives, to the fullest extent permitted by law, all rights to require Beneficiary Parties to (a) proceed against Borrower or any other guarantor of Borrower's payment or performance with respect to the Guaranteed Obligations (an "**Other Guarantor**"), (b) if Borrower or any Other Guarantor is a partnership, proceed against any general partner of Borrower or the Other Guarantor, (c) proceed against or exhaust any collateral held by Beneficiary Parties to secure the payment or performance of the Guaranteed Obligations, (d) pursue any other remedy it may now or hereafter have against Borrower, or, if Borrower is a partnership, any general partner of Borrower or (e) record the Security Instrument or to file any financing statement or to otherwise enforce, perfect, protect, secure or insure any lien or security interest given as security in connection with the Security Documents. Guarantor further waives, to the fullest extent permitted by applicable law, (a) any right to revoke this Guaranty as to any future advances under the Security Instrument or the other Loan Documents, (b) any defenses that could arise with respect to an amendment or modification of the Guaranteed Obligations by operation of law, action of any court or the amendment of any of the Loan Documents, (c) any defense that Beneficiary Parties have waived any Guaranteed Obligation by failing to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy and (d) any other event or circumstance that may constitute a defense of Borrower or Guarantor to payment of the Guaranteed Obligations.

6. **Modification of Loan Documents.** At any time or from time to time and any number of times, without notice to Guarantor and without affecting the liability of Guarantor, (a)

the time for payment or performance of the Guaranteed Obligations; (b) the time for Borrower's performance of or compliance with any covenant or agreement contained in the Note, the Security Instrument or any other Loan Document, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the Note, the Security Instrument, or any other Loan Document may be modified or amended by Beneficiary Parties and Borrower in any respect, including, but not limited to, an increase in the principal amount; and (d) any security for the Guaranteed Obligations may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Guaranteed Obligations.

7. **Joint and Several Liability.** If more than one person executes this Guaranty, the obligations of those persons under this Guaranty and any Other Guarantor shall be joint and several. Beneficiary Parties, in their sole and absolute discretion, may (a) bring suit against Guarantor, or any one or more of the persons constituting Guarantor, and any Other Guarantor, jointly and severally, or against any one or more of them; (b) compromise or settle with any one or more of the persons constituting Guarantor or any Other Guarantor for such consideration as Beneficiary Parties may deem proper; (c) release one or more of the persons constituting Guarantor, or any Other Guarantor, from liability; and/or (d) otherwise deal with Guarantor and any Other Guarantor, or any one or more of them, in any manner, and no such action shall impair the rights of Beneficiary Parties to collect from Guarantor any amount guaranteed by Guarantor under this Guaranty. Nothing contained in this paragraph shall in any way affect or impair the rights or obligations of Guarantor with respect to any Other Guarantor.

8. **Subordination of Borrower's Indebtedness to Guarantor.** Any indebtedness of Borrower held by Guarantor now or in the future is and shall be subordinated to the Guaranteed Obligations of Borrower to Beneficiary Parties under the Loan Documents. After the occurrence and during the continuance of a default or the occurrence and during the continuance of an event which would, with the giving of notice or the passage of time, or both, constitute a default, Guarantor shall not receive or collect, directly or indirectly, from Borrower or any other party any amount of such indebtedness until the Guaranteed Obligations are paid in full. To the extent that Guarantor receives payment of any of the indebtedness of Borrower in violation of the preceding sentence, the same shall be collected, enforced and received by Guarantor, as trustee for Beneficiary Parties, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

9. **Waiver of Subrogation.** Guarantor agrees to withhold the exercise of any and all subrogation and reimbursement rights against Borrower, against any other person, and against any collateral or security for the Guaranteed Obligations and Guarantor shall have no right of, and hereby waives any claim for, subrogation or reimbursement against Borrower or any managing member or general partner of Borrower by reason of any payment by Guarantor under this Guaranty, whether such right or claim arises at law or in equity or under any contract or statute, until (a) the Guaranteed Obligations has been indefeasibly paid and satisfied in full, (b) all obligations owed to Beneficiary Parties have been fully performed, (c) there has expired the maximum possible period thereafter during which any payment or performance made by Borrower to Beneficiary Parties with respect to the Guaranteed Obligations, could be deemed a preference under the United States Bankruptcy Code and (d) each of Beneficiary Parties has released, transferred or disposed of all its right, title and interest in such collateral or security.

10. **Preference.** If any payment by Borrower is held to constitute a preference under any applicable bankruptcy, insolvency, or similar laws, or if for any other reason any of Beneficiary Parties is required to refund any sums to Borrower, such refund shall not constitute a release of any liability of Guarantor under this Guaranty. It is the intention of Beneficiary Parties and Guarantor that Guarantor's obligations under this Guaranty shall not be discharged except by Guarantor's performance of such obligations and then only to the extent of such performance.

11. **Reinstatement.** If at any time any payment of any amounts due under the Loan Documents by Borrower, Guarantor or any other Person is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of Borrower or Guarantor or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment has been due but not made at such time.

12. **Guarantor's Financial Condition.**

(a) Guarantor hereby represents and warrants to Beneficiary Parties that as of the date hereof and throughout the term of the Loan, and after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is and will be solvent and has and will have (i) assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and (ii) property and assets sufficient to satisfy and repay its obligations and liabilities. Guarantor hereby covenants and agrees that during the term of the Loan, except for the payment of employee salaries and benefits and dividends in the ordinary course of business, it shall not sell, pledge, mortgage or otherwise transfer any of its assets, or any interest therein, on terms materially less favorable than would be obtained in an arms-length transaction for fair consideration.

(b) Guarantor hereby represents and warrants to Beneficiary Parties that all financial statements and other financial data previously delivered to Lender in connection with the application for the Loan and/or this Guaranty relating to the Guarantor are true, correct and complete in all material respects. Such financial statements fairly present the financial positions of all Persons who are the subjects thereof as of the respective dates thereof. Guarantor further represents and warrants to Beneficiary Parties that, except as previously disclosed to Lender in writing, no material adverse change has occurred as of the date hereof and no material change shall have occurred as of the date of each advance of the Loan, in such financial position, or in the business, operations, assets, management, ownership, condition (financial or otherwise) or prospects of Guarantor, since the respective dates of such financial statements and financial data. Except as otherwise previously disclosed to Lender in writing, Guarantor has no knowledge of any material contractual obligations of Guarantor which might have a material adverse effect upon the ability of Guarantor to perform Guarantor's obligations under this Guaranty.

(c) Guarantor shall furnish or cause to be furnished to Lender: (i) within ten (10) days of Lender's request, a copy of the most recent year's federal tax return for such Guarantor, and (ii) as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of Guarantor, copies of the following financial

statements of Guarantor for such fiscal year, prepared, and audited by an independent certified public accountant acceptable to Lender, in accordance with generally accepted accounting principles: (A) a balance sheet as of the end of such fiscal year (including supporting schedules), and (B) a statement of income and capital accounts for such fiscal year.

(d) Guarantor shall from time to time, upon request by Lender, deliver to Lender such other financial statements as Lender may reasonably require.

13. **Reserved.**

14. **California Provisions.**

(a) If a guarantor is liable for only a portion of the Guaranteed Obligations, Guarantor hereby waives its rights under California Civil Code Section 2822(a) to designate the portion of the Guaranteed Obligations that shall be satisfied by Borrower's partial payment.

(b) Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2810 and agrees that by doing so Guarantor shall be liable even if Borrower had no liability at the time of execution of the Note, the Security Instrument or any other Loan Document, or thereafter ceases to be liable. Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2809 and agrees that by doing so Guarantor's liability may be larger in amount and more burdensome than that of Borrower. Guarantor also waives, to the fullest extent permitted by law, any and all benefits under California Civil Code Sections 2845, 2849 and 2850.

(c) Guarantor understands that the exercise by Beneficiary Parties of certain rights and remedies contained in the Security Instrument (such as a nonjudicial foreclosure sale) may affect or eliminate Guarantor's right of subrogation against Borrower and that Guarantor may therefore incur a partially or totally nonreimbursable liability under this Guaranty. Nevertheless, Guarantor hereby authorizes and empowers Beneficiary Parties to exercise, in their sole and absolute discretion, any right or remedy, or any combination thereof, which may then be available, since it is the intent and purpose of Guarantor that the obligations under this Guaranty shall be absolute, independent and unconditional under any and all circumstances. Guarantor expressly waives any defense (which defense, if Guarantor had not given this waiver, Guarantor might otherwise have) to a judgment against Guarantor by reason of a nonjudicial foreclosure. Without limiting the generality of the foregoing, Guarantor hereby expressly waives any and all benefits under (i) California Code of Civil Procedure Section 580a (which Section, if Guarantor had not given this waiver, would otherwise limit Guarantor's liability after a nonjudicial foreclosure sale to the difference between the obligations of Guarantor under this Guaranty and the fair market value of the Property or interests sold at such nonjudicial foreclosure sale), (ii) California Code of Civil Procedure Sections 580b and 580d (which Sections, if Guarantor had not given this waiver, would otherwise limit Beneficiary Parties' right to recover a deficiency judgment with respect to purchase money obligations and after a nonjudicial foreclosure sale, respectively), and

(iii) California Code of Civil Procedure Section 726 (which Section, if Guarantor had not given this waiver, among other things, would otherwise require Beneficiary Parties to exhaust all of their security before a personal judgment could be obtained for a deficiency). Notwithstanding any foreclosure of the lien of the Security Instrument, whether by the exercise of the power of sale contained in the Security Instrument, by an action for judicial foreclosure or by Beneficiary Parties' acceptance of a deed in lieu of foreclosure, Guarantor shall remain bound under this Guaranty.

(d) In accordance with Section 2856 of the California Civil Code, Guarantor also waives any right or defense based upon an election of remedies by Beneficiary Parties, even though such election (e.g., nonjudicial foreclosure with respect to any collateral held by Beneficiary Parties to secure payment and performance of the Guaranteed Obligations) destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor (after payment of the obligations guaranteed by Guarantor under this Guaranty) to proceed against Borrower for reimbursement, or both, by operation of Section 580d of the Code of Civil Procedure or otherwise.

(e) In accordance with Section 2856 of the California Civil Code, Guarantor waives any and all other rights and defenses available to Guarantor by reason of Sections 2787 through 2855, inclusive, of the California Civil Code, including any and all rights or defenses Guarantor may have by reason of protection afforded to Borrower with respect to any of the obligations of Guarantor under this Guaranty pursuant to the antideficiency or other laws of the State of California limiting or discharging Borrower's Guaranteed Obligations, including Sections 580a, 580b, 580d, and 726 of the California Code of Civil Procedure.

(f) In accordance with Section 2856 of the California Civil Code, Guarantor agrees to withhold the exercise of any and all subrogation and reimbursement rights against Borrower, against any other person, and against any collateral or security for the Guaranteed Obligations, including any such rights pursuant to Sections 2847 and 2848 of the California Civil Code, until the Guaranteed Obligations has been indefeasibly paid and satisfied in full, all obligations owed to Beneficiary Parties under the Loan Documents have been fully performed, and each of Beneficiary Parties has released, transferred or disposed of all of its right, title and interest in such collateral or security.

(g) JUDICIAL REFERENCE AGREEMENT; REFEREE; COSTS.

(i) *Controversies Subject to Judicial Reference; Conduct of Reference.* In the event that any action, proceeding and/or hearing on any matter whatsoever, including all issues of fact or law arising out of, or in any way connected with, the Note, the Security Instrument, this Guaranty or any of the Loan Documents, or the enforcement of any remedy under any law, statute, or regulation (hereinafter, a "**Controversy**"), is to be tried in a court of the State of California and the jury trial waiver provisions set forth herein are not permitted or otherwise applicable under then-prevailing law:

(A) Each Controversy shall be determined by a consensual general judicial reference (the “**Reference**”) pursuant to the provisions of California Code of Civil Procedure §§ 638 et seq., as such statutes may be amended or modified from time to time.

(B) Upon a written request, or upon an appropriate motion by either a Beneficiary Party or Guarantor, any pending action relating to any Controversy and every Controversy shall be heard by a single Referee who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee’s statement of decision will constitute the conclusive determination of the Controversy. Each Beneficiary Party and Guarantor agrees that the Referee shall have the power to issue all legal and equitable relief appropriate under the circumstances before him/her.

(C) Each such Beneficiary Party and Guarantor shall promptly and diligently cooperate with one another and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of each Controversy in accordance with the terms of this Section 14(g).

(D) Either of such Beneficiary Party or Guarantor may file the Referee’s findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee’s report and have judgment entered thereon. If the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it.

(E) Each such Beneficiary Party and Guarantor will have such rights to assert such objections as are set forth in California Code of Civil Procedure §§ 638 *et seq.*

(F) All proceedings shall be closed to the public and confidential, and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

(ii) *Selection of Referee; Powers.*

(A) The Beneficiary Party(ies) and Guarantor who are party to such Controversy shall select a single neutral referee (the “**Referee**”), who shall be a retired judge or justice of the courts of the State of California, or a federal court judge, in each case, with at least ten years of judicial experience in civil matters. The Referee shall be appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts).

(B) If within ten (10) days after the request or motion for the Reference, such Beneficiary Party(ies) and Guarantor cannot agree upon a Referee, either such Beneficiary Party(ies) or Guarantor may request or move that the Referee be appointed by the Presiding Judge of the Los Angeles County Superior Court or of the U.S. District Court for the Central District of California. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 14(g).

(iii) *Provisional Remedies; Self Help and Foreclosure.*

(A) No provision of this Section 14(g) shall limit the right of either a Beneficiary Party or a Guarantor, as the case may be, to (1) exercise such self-help remedies as might otherwise be available under applicable law, (2) initiate judicial or non-judicial foreclosure against any real or personal property collateral, (3) exercise any judicial or power of sale rights, or (4) obtain or oppose provisional or ancillary remedies, including without limitation, injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after or during the pendency of the Reference.

(B) The exercise of, or opposition to, any such remedy does not waive the right of any Beneficiary Party or any Guarantor to the Reference pursuant to this Section 14(g).

(iv) *Costs and Fees.*

(A) Promptly following the selection of the Referee, each Beneficiary Party and Guarantor who is party to such Controversy shall advance equal portions of the estimated fees and costs of the Referee.

(B) In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys' fees, to the prevailing party, if any, and may order the Referee's fees to be paid or shared by each Beneficiary Party and/or Guarantor who is party to such Controversy in such manner as the Referee deems just.

15. **Term of Guaranty.** Subject to the provisions of Section 10 (Preference) and Section 11 (Reinstatement), upon the earlier to occur of (a) the Conversion, (b) delivery of the Release of Construction Covenants from the Lender to Borrower pursuant to the Loan Agreement, or (b) the satisfaction of the Guaranteed Obligations and all of Borrower's other obligations under the Loan Documents and the due recordation of the release or reconveyance of the Security Instrument, this Guaranty shall automatically terminate, except with respect to: (i) any outstanding payment obligations hereunder which have not been waived by Lender, (ii) any mechanic's and materialmen's liens or claims therefor imposed or alleged against the Property with respect to the Work, any other liens, charges, encumbrances or other restrictions (other than

those listed in the title policy issued to Lender with respect to the Loan) which remain against the Property as of the date of Conversion and (iii) any obligations hereunder with respect to the Work; provided, however, if Borrower causes to be delivered to Beneficiary Parties after the date of Conversion an assignment in form and substance acceptable to Lender of all warranties and guarantees received by Borrower from any contractor, subcontractor or other party providing construction and/or rehabilitation services relating to the Work, then, effective as of the date of such assignment, the liability of Guarantor hereunder with respect to the completion of the Work shall terminate and be of no further force and effect.

16. **Determinations by Lender.** Except to the extent expressly set forth in this Guaranty to the contrary, in any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Guaranty, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

17. **Governing Law.** This Guaranty shall be governed by and enforced in accordance with the laws of California, without giving effect to the choice of law principles of California that would require the application of the laws of a jurisdiction other than California.

18. **Consent to Jurisdiction and Venue.** Guarantor agrees that any controversy arising under or in relation to this Guaranty shall be litigated exclusively in California. The state and federal courts and authorities with jurisdiction in California shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Guaranty. Guarantor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties' right to bring any suit, action or proceeding relating to matters arising under this Guaranty against Guarantor or any of Guarantor's assets in any court of any other jurisdiction.

19. **Successors and Assigns.** This Guaranty shall be binding upon Guarantor and its heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, and shall inure to the benefit of the Beneficiary Parties and their respective successors, successors-in-interest and assigns. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities. Guarantor acknowledges and agrees that any Beneficiary Party, at its option, may assign its respective rights and interests under this Guaranty and the other Loan Documents in whole or in part and upon such assignment all the terms and provisions of this Guaranty or the other Loan Documents shall inure to the benefit of such assignee to the extent so assigned. Guarantor may not assign or delegate its rights, interests or obligations under this Guaranty without first obtaining Lender's prior written consent.

20. **Severability.** The invalidity, illegality or unenforceability of any provision of this Guaranty shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

21. **Expenses.** Guarantor shall pay to the Beneficiary Parties, upon demand, the amount of any and all expenses, including, without limitation, reasonable attorneys' fees (including reasonable time charges of attorneys who may be employees of Beneficiary Parties), which the Beneficiary Parties may incur in connection with (a) the exercise or enforcement of any of their rights hereunder, (b) the failure by Guarantor to perform or observe any of the provisions hereof, or (c) the breach by Guarantor of any representation or warranty of Guarantor set forth herein. Guarantor shall also pay to the Beneficiary Party who incurs any such expenses, interest on such expenses computed at the Default Rate set forth in the Note from the date on which such expenses are incurred to the date of payment thereof.

22. **Remedies Cumulative.** In the event of Guarantor's default under this Guaranty, the Beneficiary Parties may exercise all or any one or more of their rights and remedies available under this Guaranty, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the Beneficiary Parties from exercising any other right or remedy available to the Beneficiary Parties. The Beneficiary Parties may exercise any such remedies from time to time as often as may be deemed necessary by the Beneficiary Parties.

23. **No Agency or Partnership.** Nothing contained in this Guaranty shall constitute any Beneficiary Party as a joint venturer, partner or agent of Guarantor, or render any Beneficiary Party liable for any debts, obligations, acts, omissions, representations or contracts of Guarantor.

24. **Entire Agreement; Amendment and Waiver.** This Guaranty contains the complete and entire understanding of the parties with respect to the matters covered herein. Guarantor acknowledges that Guarantor has received copies of the Note, the Environmental Agreement and all other Loan Documents. This Guaranty may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Guaranty shall be considered as a general waiver.

25. **Further Assurances.** Guarantor shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that any Beneficiary Party may reasonably request, in order to protect any right or interest granted by this Guaranty or to enable the Beneficiary Party to exercise and enforce its rights and remedies under this Guaranty.

26. **Notices; Change of Guarantor's Address.** All notices given under this Guaranty shall be in writing and shall be sent to the respective addresses of the parties, in the manner set forth in the Security Instrument. Notices to Guarantor shall be sent to the address of Guarantor, at the address set forth below Guarantor's signature block to this Guaranty. Guarantor agrees to notify Lender (in the manner for giving notices provided in the Security Instrument) of any change in Guarantor's address within ten (10) Business Days after such change of address occurs.

27. **Counterparts.** To the extent Guarantor consists of more than one party, this Guaranty may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

28. **Captions.** The captions of the sections of this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

29. **Servicer.** Guarantor hereby acknowledges and agrees that, pursuant to the terms of the Security Instrument: (a) from time to time, Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Note, this Guaranty or the other Loan Documents, and to otherwise service the Loan and (b) unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by such servicer with the same force and effect.

30. **Beneficiary Parties as Third Party Beneficiary.** Each of the Beneficiary Parties shall be a third party beneficiary of this Guaranty for all purposes.

31. **Time of the Essence.** Time is of the essence with respect to this Guaranty.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Completion and Repayment Guaranty or caused this Completion and Repayment Guaranty to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

GUARANTOR:

[guarantor(s)]

Guarantor's Address for Notices:

[guarantor]

c/o The Core Companies
470 South Market Street
San Jose, CA 95113
Attention: Chris Neale

With a copy to:

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

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this “**Indemnity**”), dated as of _____, 20__, is made by _____ (the “**Borrower**”), in favor of THE CITY OF SANTA CLARA, a California municipal corporation (the “**City**”).

WITNESSETH

WHEREAS, Concurrently with the execution of this Indemnity, City and Borrower have entered into that certain Ground Lease pursuant to which City is leasing to Borrower an approximately 1.60 acre parcel (the “**Property**”) described on Exhibit 1 hereto for the construction and operation of 165 unit senior affordable housing project (the “**Project**”).

WHEREAS, Concurrently with the execution of this Indemnity, City and Borrower have entered into that certain Loan Agreement (the “**Loan Agreement**”), pursuant to which the City agreed to make a loan (the “**City Loan**”) to Borrower for the purposes of providing financial assistance for the construction of the Project. The City Loan is evidenced by that certain Promissory Note in the original principal amount of _____ (\$_____) 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. The Loan Agreement, the City Note, the City Deed of Trust and the other documents and instruments defined in the Loan Agreement as the “**City Loan Documents**” are referred to herein collectively as the “**City Loan Documents**”;

WHEREAS, Borrower has agreed to execute and deliver to the City this Indemnity to induce the City to make the City Loan.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Borrower hereby agrees with the City as follows:

Section 1. DEFINITIONS

For the purpose of this Indemnity, “**Hazardous Materials**” or “**Hazardous Substances**” shall include, but not be limited to, substances defined as “extremely hazardous substances,” “hazardous substances,” “hazardous materials,” “hazardous waste” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; and those substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code, as “infectious waste” in Section 25117.5 of the California Health and Safety Code, or as “hazardous substances” in Section 25316 of the California Health and Safety Code or “hazardous materials” as defined in Section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws. Other capitalized terms used in this Indemnity and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement with the same force and effect as if set forth in full below.

Section 2. COVENANTS AND INDEMNITY

The following covenants, and indemnities are hereby given and made by Borrower:

2.1 Covenants.

(a) Borrower covenants that it shall comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials (“**Environmental Laws**”), to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Borrower covenants that the Property will not, while Borrower is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except for *de minimis* quantities used at the Property in compliance with all applicable Environmental Laws in connection with the construction of and/or the routine operation and maintenance of the Project and the Property or in the ordinary course of the tenants’ residencies.

(c) Borrower further agrees that Borrower shall not release or dispose of any Hazardous Materials at the Property except for *de minimis* quantities used at the Property in compliance with all applicable Environmental Laws in connection with the construction of and/or routine operation and maintenance of the Project and Property or in the ordinary course of the tenants’ residencies without the express written approval of the City and that any such release or disposal shall be effected in strict compliance with all applicable Environmental Laws.

(d) The City shall have the right, at any time, to conduct an environmental audit of the Property at the City’s expense, unless Hazardous Materials are found in violation of Environmental Laws, then at Borrower’s sole cost and expense, and Borrower shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the City reasonably believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior written notice has been given to Borrower and only in the presence of a representative of Borrower. Borrower shall give the City and its agents and employees access to the Property to remove, or otherwise to mitigate against the effects of, Hazardous Materials in violation of Environmental Laws.

(e) Borrower shall not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material (collectively, “**Asbestos**”).

(f) Borrower shall immediately advise the City in writing of any of the following: (i) any pending or threatened environmental claim against Borrower or the Property, (ii) any condition or occurrence on the Property that (A) results in noncompliance by Borrower with any applicable Environmental Law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any Environmental Law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Borrower.

2.2 Indemnity.

Borrower shall indemnify, protect, and hold the City harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the "**Obligations**") which may at any time be imposed upon, incurred by or asserted or awarded against the City and arising from or out of:

- (a) The presence of any Hazardous Materials on, in, under, or affecting all or any portion of the Property or any surrounding areas;
- (b) The breach of any covenant made by Borrower in Section 2.1 hereof; or
- (c) The enforcement by the City of any of the provisions of this Section 2.2 or the assertion by Borrower of any defense to its obligations hereunder.

Subject to the qualifications set forth in Section 2.3, below, Borrower shall be liable for payment and performance of the Obligations to the full extent (but only to the extent) of the property and assets (including the Property) which constitute security for such Obligations. If default occurs in the timely and proper payment and performance of any such Obligations, any judicial proceedings brought by the City against Borrower shall be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests securing such Obligations and enforcement and collection of such Obligations for which Borrower remains directly liable as provided in this Section. If there is a foreclosure of any such liens, mortgages, assignments, rights and security interests by power of sale or otherwise, no personal judgment for any deficiency thereon shall be sought or obtained by the City against Borrower, or its officers, directors, agents, attorneys, servants or employees.

2.3 Exceptions to Non-Recourse Liability.

Notwithstanding the foregoing provisions of Section 2.2 or any other agreements,

- (a) The City may proceed against any other person or entity whatsoever with respect to the enforcement of any guarantees, surety bonds, letters of credit, reimbursement agreements or similar rights to payment or performance; and
- (b) The City may recover personally from any person or entity:
 - (1) any damages, costs and expenses incurred by the City as a result of the negligence of such person or entity, involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials (other than Preexisting Hazardous Materials) by such person or entity or by others; provided, however, that neither Borrower nor any officer, director, agent, attorney, servant or employee of Borrower shall have any personal liability if the act or omission complained of was performed in good faith and was not reckless, wanton, intentional or grossly negligent;

(2) 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;

(3) any damages, costs and expenses incurred by City as a result of any misappropriation of City Loan proceeds for the construction of the Project, as described in the Loan Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds; and

(4) 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 3. BORROWER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations.

Borrower hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of the City Loan Documents or affecting any of the rights of the City with respect thereto. The obligations of Borrower hereunder shall be absolute and unconditional irrespective of:

(a) The validity, regularity, or enforceability of the City Loan Documents or any other instrument or document executed or delivered in connection therewith;

(b) Any alteration, amendment, modification, release, termination, or cancellation of any of the City Loan Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of Borrower contained in any of the City Loan Documents;

(c) Any extension of the maturity of the City Loan or any waiver of, or consent to any departure from, any provision contained in any of the City Loan Documents;

(d) Any exculpatory provision in any of the City Loan Documents limiting the City's recourse to property encumbered by the Deed of Trust securing the City Loan, or to any other security, or limiting the City's rights to a deficiency judgment against Borrower;

(e) Any exchange, addition, subordination, or release of, or nonperfection of any lien on or security interest in, any collateral for the City Loan, or any release, amendment, waiver of, or consent to any departure from any provision of any guarantee given in respect of the City Loan;

(f) The insolvency or bankruptcy of Borrower, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the City Loan; or

(g) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower, or any other indemnitor or guarantor with respect to the City Loan or any or all of the Obligations.

3.2 Continuation.

This Indemnity (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the payment in full of the City Loan or the release or other extinguishment of the City Deed of Trust, or any other security for the City Loan); and (b) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the City upon the insolvency, bankruptcy, or reorganization of Borrower or otherwise, all as though such payment had not been made.

3.3 Termination.

Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Borrower's obligations under the City Loan Documents, this Indemnity shall not terminate if any of the following shall have occurred:

(a) The City has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Environmental Laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

Section 4. WAIVER

Borrower hereby waives the following:

(a) Promptness and diligence;

(b) Notice of acceptance and notice of the incurrence of any obligation by Borrower;

(c) Notice of any action taken by the City, Borrower, or any other interested party under any City Loan Document or under any other agreement or instrument relating thereto;

(d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Borrower of its Obligations hereunder;

(e) To the extent permitted by law, the right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;

(f) Any requirement that the City protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;

(g) Any requirement that the City exhaust any right or take any action against Borrower or any other person or collateral; and

(h) Any defense that may arise by reason of:

(1) The incapacity, lack of City, death or disability of, or revocation hereof by, any person or persons;

(2) The failure of the City to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or

(3) Any defense based upon an election of remedies by the City, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of Borrower or any other right of Borrower to proceed against Borrower.

Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be given by personal delivery, certified mail, return receipt requested, or overnight delivery service to the address set forth in the first paragraph of this Indemnity, above, or given by facsimile to the facsimile numbers stated below, with confirmations mailed by certified mail, return receipt requested to the address set forth above, of the party to whom such notice is to be given (or to such other address as the parties hereto, shall designate in writing):

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

In the case of Borrower: _____

Any notice that is transmitted by electronic facsimile 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; and any notice that is sent by certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 6. MISCELLANEOUS

6.1 Borrower shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the City at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by Borrower and the City, and no waiver of any provision of this Indemnity, and no consent to any departure by Borrower from any provision of this Indemnity, shall be effective unless it is in writing and signed by the City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the City to exercise, and no delay in exercising, any right hereunder or under any other City Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the City provided herein and in the other City Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the City under any City Loan Document against any party thereto are not conditional or contingent on any attempt by the City to exercise any of its rights under any other City Loan Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (a) be binding upon Borrower, and Borrower's successors and assigns; and (b) inure, together with all rights and remedies of the City hereunder, to the benefit of the City, its respective directors, officers, employees, and agents, any successors to the City's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of the City's rights and remedies under the City Loan Documents, any successors to any such person, and all directors, officers, employees, and agents of all of the aforementioned parties. Without limiting the generality of clause (b) of the immediately preceding sentence, the City may, subject to, and in accordance with, the provisions of the City Loan Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other City Loan Document, to any other person, and such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to the City herein or otherwise. None of the rights or obligations of Borrower hereunder may be assigned or otherwise transferred without the prior written consent of the City.

6.6 Borrower hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in Santa Clara County in any action or proceeding arising

out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Borrower irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Borrower agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

[Signatures begin on following page.]

IN WITNESS WHEREOF, Borrower has duly executed this Indemnity as of the date first set forth above.

“BORROWER”

_____,

By: _____

Date: _____

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.]