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Santa Clara, California 95050

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AFFORDABLE HOUSING AGREEMENT

by and between

THE CITY OF SANTA CLARA

and

ZAEN Partners, LLC

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ATTACHMENTS

ATTACHMENT NO. 1 LEGAL DESCRIPTION - SITE

ATTACHMENT NO. 2 SCOPE OF DEVELOPMENT

ATTACHMENT NO. 3 AGREEMENT CONTAINING COVENANTS AND
RESTRICTIONS

AFFORDABLE HOUSING AGREEMENT

This AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into by and between the CITY OF SANTA CLARA, a chartered California municipal corporation ("City") and ZAEN Partners, LLC, a California limited liability company ("Developer"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement". City and Developer agree as follows:

ARTICLE 1 SUBJECT OF AGREEMENT

Section 1.1 Purpose of the Agreement

a. The purpose of this Agreement is to enter into a binding agreement with persons having legal or equitable interest in real property for the development of such property, in order to, among other things, increase, improve and preserve the supply of housing in the community for very low income households, as defined in Attachment No. 3, Agreement Containing Covenants and Restrictions, attached hereto.

b. Developer has recently obtained Architectural Review approval of an apartment community containing 503 residential units and approximately 23,780 square feet of commercial space to be constructed (in two phases) on the real property at 5123 Calle de Luna in the City of Santa Clara (Parcels 19 and 29). In addition, Developer is seeking approval of a Project at 2310 Calle Del Mundo (Parcel 24) (hereinafter "Project") that would include 150 residential units. In addition, Developer anticipates obtaining eventual approval of additional residential units at 2263 Calle Del Mundo (Parcel 60 and 61) which is anticipated to include approximately 316 residential units. All of these approved and contemplated developments (Parcels 19/29, Parcel 24, and Parcels 60/61) would be subject to affordable unit requirements. In coordination with the City, Developer has agreed that in lieu of providing affordable units within each individual project, Developer will deliver all of the affordable unit requirements for Parcels 19, 29, 24, 60 and 61 at once, by providing thirty (30) affordable housing units within the Parcel 24 Project, a .76 acre site owned by Developer ("Site") at the very low income level (defined as 50% of AMI), for a period of 55 years, in addition to paying a one-time Affordable Housing In-Lieu Fee equals to one half unit at the residential rental rate. These thirty (30) very low income units on the Site will satisfy the Affordable Housing Requirements for the project on Parcel 19 and 29, the Affordable Housing Requirements with respect to Parcel 24, and may also be used to satisfy the Affordable Housing Requirements in regard to the future development in Parcel 60 and 61, which shall be formalized if that future project is approved. The distribution of the units in the Parcel 24 Project shall be thirty (30) units for very low income residents, one hundred nineteen (119) market rate units and one (1) unrestricted managers unit.

c. The development of the Site to include the provision of affordable housing opportunities pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements under which the Project is to be undertaken and is being assisted.

d. The full term of the affordability covenants shall be for a total period of fifty-five (55) years (the "Affordability Period"), effective from the date the Project is placed in service.

e. If any general provision of this Section 1.1 conflicts with a more specific provision of this Agreement, the more specific provision shall prevail.

Section 1.2 The City

a. The City is a chartered California municipal corporation, exercising governmental functions and powers, and organized and existing under the laws of the State of California.

b. The address of City for purposes of notice hereunder is at 1500 Warburton Avenue, Santa Clara, California 95050.

c. City as used in this Agreement includes the City of Santa Clara, California and any assignee of or successor to its rights, powers and responsibilities.

Section 1.3 The Developer

a. The Developer of the Project is ZAEN Partners, LLC, a California limited company.

b. The address of ZAEN Partners, LLC a California limited company, for purposes of receiving notices pursuant to this Agreement is:

ZAEN Partners, LLC
c/o Ensemble Investments
444 West Ocean Boulevard, Suite 650
Long Beach, CA 90802

c. Wherever the term Developer is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

Section 1.4 Assignment of this Agreement

a. Upon a sale or transfer of the Site, the Developer shall assign its rights and obligations under this Agreement to such successors or assigns in and to the Site. The terms, covenants, and conditions of this Agreement shall run with the land to the Site and shall inure to the benefit of, apply to, and shall bind the successors and

assigns of Developer. Upon an assignment, the assigning Developer will be released from the obligations of Developer under this Agreement which relate to the period from and after the date of the assignment, including, without limitation, the obligations in Section 2.1 and Section 3.1 hereof.

ARTICLE 2 DEVELOPMENT OF THE SITE

Section 2.1 Scope of Development; Schedule of Performance

In accordance with Developer's business plan for the Site, Developer shall complete construction of the Project, including the provision of the Affordable Housing Units, in accordance with the Scope of Development (Attachment No. 2).

Section 2.2 Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Site, the Developer shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work. The City shall provide appropriate assistance to the Developer in connection with obtaining these permits.

Section 2.3 Zoning and Land Use Requirements

It is the responsibility of Developer, without cost to City, to ensure that zoning of the Site and all applicable City land use requirements will be such as to permit the development of the Project and the use, operation and maintenance of such Project in accordance with the provisions of this Agreement. Developer acknowledges that this Agreement is not a Development Agreement pursuant to Government Code Section 65865 et seq.

Section 2.4 Construction Financing

Developer hereby represents that no City funds shall be used for construction of the Project.

Section 2.5 Relationship of City and Developer

Nothing contained in this Agreement or in any other document or instrument made in connection with this Agreement shall be deemed or construed to create a partnership, tenancy in common, joint tenancy, joint venture or co-ownership by or between the City and the Developer. The City shall not be in any way responsible or liable for the debts, losses, obligations or duties of the Developer with respect to the Site or otherwise.

ARTICLE 3

USE OF THE SITE

Section 3.1 Uses

a. In accordance with Developer's business plan for the Site, the Developer covenants and agrees for itself, its successors, its assignees and every successor in interest to the Site or any part thereof, that Developer, its successors and assignees shall develop the Project on the Site (including, without limitation, thirty (30) Affordable Housing Units) and use the Site for the development and occupancy of residential dwelling units, as provided in the Approved Plans.

b. In addition, the Developer agrees to restrict the occupancy of the 30 very low income Units on the Site as rental units at an Affordable Housing Cost, as defined in Attachment No. 3, titled Agreement Containing Covenants and Restrictions, attached hereto, it being agreed that this Agreement shall terminate upon issuance of permanent certificate(s) of occupancy for the Project, and the Agreement Containing Covenants and Restrictions shall thereafter constitute the sole affordable housing obligations owed by Developer in favor of the City with respect to the Project. During the term of rental use, the Agreement Containing Covenants and Restrictions shall be recorded against the Project, substantially in the form attached hereto as Attachment No. 3. The Agreement Containing Covenants and Restrictions shall be binding on the Developer and any successor in interest to the Affordable Housing Units or any part thereof for the benefit and in favor of the City. The obligations set forth in the Agreement Containing Covenants and Restrictions shall remain in effect for the respective time period set forth in the Agreement Containing Covenants and Restrictions.

Section 3.2 Maintenance of the Site

Developer, its successors in interest or assignees, shall reasonably maintain the Project on the Site and shall keep the Site in good condition and repair free from any accumulation of debris or waste materials.

ARTICLE 4

DEFAULTS, REMEDIES AND TERMINATION

Section 4.1 Defaults - General

a. Except as provided in Section 5.4, failure by either Party to perform any material obligation set forth in any term or provision of this Agreement constitutes a default under this Agreement. The Defaulting Party must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The Non-Defaulting Party shall give written notice of default to the Defaulting Party, specifying the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain

any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If the default is reasonably capable of being cured within thirty (30) days of notice, as set forth in Section 4.1(b), the Defaulting Party shall have such period to effect a cure prior to exercise of remedies by the Non-Defaulting Party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the Defaulting Party (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the Defaulting Party shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the Non-Defaulting Party. In no event shall the Non-Defaulting party be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given.

Section 4.2 Institution of Legal Actions

Subject to the notice and cure provisions of Section 4.1, in addition to any other rights or remedies (and except as otherwise provided in this Agreement), either Party may institute legal action to cure, correct or remedy any material default, to recover damages for any material default, or to obtain any other remedy for a material default consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California or in the United States District Court for the Northern District of California.

Section 4.3 Applicable Law

The laws of the State of California shall govern this Agreement.

Section 4.4 Acceptance of Service of Process

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

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

Section 4.5 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 4.6 Damages

If either Party materially defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 4.1, the Defaulting Party shall be liable to the Non-Defaulting party for any damages caused by such default, and the Non-Defaulting party may, after such notice and opportunity to cure (but not before) commence an action for damages against the Defaulting Party with respect to such default.

Section 4.7 Specific Performance

If either Party materially defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 4.1, the Non-Defaulting party, at its option, may, after such notice and opportunity to cure (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

Section 4.8 Termination by Either Party; Term of this Agreement

Either Party shall have the right to terminate this Agreement in the event the other party is in Default of any material term or provision of this Agreement, and, following notice, fails to cure such default within the time provided in Section 4.1.

Notwithstanding any provision herein to the contrary, this Agreement shall terminate and be of no further force or effect upon the City's issuance of permanent certificate(s) of occupancy for the Project, it being the intent of the parties that the Agreement Containing Covenants and Restrictions shall thereafter constitute the sole affordable housing obligations owed by Developer in favor of the City with respect to the Project.

ARTICLE 5 GENERAL PROVISIONS

Section 5.1 Notices, Demands and Communications between the Parties

Formal notices, demands and communications between the City or the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City or the Developer, as designated in Sections 1.2 and 1.3 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by mail as provided in this Section 5.1.

Section 5.2 Conflicts of Interest

Developer certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Developer and that no person associated with Developer has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Developer is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Developer will advise City if a conflict arises.

Section 5.3 Nonliability of City Officials and Employees

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

Section 5.4 Force Majeure: Extension of Time of Performance

In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, Acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, third party litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other party, acts or failure to act of the City or any other public or governmental agency or entity (except that an act or failure to act of the City shall not excuse performance by the City) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

Section 5.5 Approvals

Approvals required of the City or the Developer shall not be unreasonably withheld.

Section 5.6 Compliance with Laws

Developer shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Developer's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally, Developer has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

Section 5.7 Hold Harmless/Indemnification

a. To the extent permitted by law, Developer agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Developer pursuant to this Agreement – including claims of any kind by Developer's employees or persons contracting with Developer to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

b. Developer's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Developer, against City (either alone, or jointly with Developer), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

ARTICLE 6 ENTIRE AGREEMENT, WAIVERS, AMENDMENTS, AND CEQA

Section 6.1 Counterparts

This Agreement may be executed in duplicate originals each of which is deemed to be an original. This Agreement includes twelve (12) pages and four (4) attachments, including all exhibits appended to such attachments, which constitute the entire understanding and agreement of the Parties.

Section 6.2 Integration

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

Section 6.3 Waivers

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

Section 6.4 Mortgagee Protection

No breach of this Agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against the Developer's Site. No lender taking title to

the Site 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 such property by such lender. Any lender who has recorded a deed of trust or mortgage against the Site 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 Site through foreclosure or deed in-lieu of foreclosure shall be obligated to construct or continue with construction of the Project on the Site.

Section 6.5 Execution and Effective Date

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

Section 6.6 California Environmental Quality Act Compliance

The parties acknowledge that the endorsement of this agreement does not commit the City to approving any particular project in the future. The parties further acknowledge that this MOU does not foreclose the possibility of the City considering alternatives to any specific proposal, potential mitigation measures, or future decisions to disapprove any particular project proposal until after conducting and completing appropriate environmental review under the California Environmental Quality Act ("CEQA"). The parties will not take any discretionary actions committing the City to a particular course of action with respect to any proposed project until the City, in its capacity as a lead or responsible agency, has considered environmental documentation required by CEQA and adopted appropriate CEQA findings.

[signatures appear on following page]

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

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager

“CITY”

ZAEN Partners, LLC
a California Limited Liability Company

By: [Rethink Entity], a California limited liability company, its co-general partner

By: _____
Steve Edwards

By: [Ensemble Entity], a California limited liability company, its managing general partner

By: _____
Tyson Sayles

Local
Address: 444 W. Ocean Boulevard, Suite 560, Long Beach, CA
Email
Address: TSayles@ensemble.net
Telephone: (562) 628-0587
Fax: _____

**ATTACHMENT NO. 1
AFFORDABLE HOUSING AGREEMENT**

LEGAL DESCRIPTION - SITE

[behind this page]

The land referred to herein below is situated in the City of Santa Clara, County of Santa Clara, State of California and is described as follows:

Parcel 9, as shown on that certain map filed on February 27, 1976 in book 368 of maps, at pages 14 and 15 in the Santa Clara County Records.

**ATTACHMENT NO. 2
AFFORDABLE HOUSING AGREEMENT**

SCOPE OF DEVELOPMENT

[behind this page]

Scope of Development Parcel 24

The project site is 0.99 acres located at 2310 Calle Del Mundo (APN# 097-46-024) in Santa Clara within the Center District of the adopted Tasman East Specific Plan. The proposed project consists of 150 mixed-income apartment units with approximately 86,520 rentable square feet and approximately 5,000 square feet of general retail.

The proposed project will set aside 20% (30 units) of the 150 units for “Very Low Income” residents, those who on average will make less than 60% of the Area’s Median Income (AMI), while 80% (119 units) will be market rate units. One onsite manager’s unit will also be provided. There is a mix of studios, 1-bedroom, 2-bedroom, and 3-bedroom units ranging in size from 420 square feet to 1,220 square feet targeted towards mid-level professional singles and couples working in the surrounding area. The site is conveniently located two blocks north of the Tasman VTA light rail stop, and within close proximity to other public transit options.

The site is bound to the north by Calle Del Mundo and to the east by the proposed Calle Del Sol extension. A public park is proposed immediately north of the site. Furthermore, the southern boundary of the site will include a 20’ greenway that will connect to the broader Tasman East district area.

The residential units will be constructed in a 5-story Type IIIA wood-frame building above two floors of Type IA structured parking that is partially below grade. The site design incorporates landscaped entryways at the retail corners, activating sidewalks and providing a retail streetscape experience with outdoor seating areas. The building design will complement the high-density transit-oriented urban environment envisioned for the Tasman East area, built with high quality materials and finishes. The building exterior includes various massing and design elements incorporated in the project’s façade and architecturally addresses its primary street frontage on Calle Del Mundo.

The project aims to promote a healthy, resilient community, through reduction of on-site resource usage, drought tolerate landscape approaches, storm water solutions, shaded open spaces, onsite electrical vehicle charging stations and green building strategies. Common area amenities include a pool courtyard and outdoor view terraces, barbecue and lounge areas, a fitness center, lobby and clubroom. Additionally, residential units will be developed with comparable finishes and appliances in line with similar midrise apartment communities planned in the neighborhood.

**ATTACHMENT NO. 3
AFFORDABLE HOUSING AGREEMENT**

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

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