

RESOLUTION NO. 19-8662

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SANTA CLARA AND CORE
COMPANIES, FOR THE AGRIHOOD PROJECT LOCATED AT
1834 WORTHINGTON CIRCLE/90 NORTH WINCHESTER
BOULEVARD, SANTA CLARA**

SCH# 2018042026
CEQ2016-01017 (EIR)
PLN2016-12389 (Rezone)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on December 5, 2016, The Core Companies (together with its affiliate, Core Winchester, LLC, "Applicant") filed an application for the vacant 5.8 acre site located at 1834 Worthington Circle ("Project Site");

WHEREAS, the Applicant applied to rezone the Project Site from Planned Development (PD) to Planned Development (PD) to allow a residential development consisting of 165 affordable senior apartments, 160 multi-family mixed-income apartments, and 36 townhouses ("Project");

WHEREAS, the Project approvals will include: Certification of the Environmental Impact Report (EIR) for the Agrihood Project ("EIR Resolution"); Rezone of the Project Site from Planned Development (PD) to Planned Development (PD) Zoning District, with Conditions of Approval, attached thereto; a Vesting Tentative Subdivision Map; and the Disposition and Development Agreement attached hereto and incorporated herein by this reference;

WHEREAS, the Disposition and Development Agreement contemplates that implementation of the Project will require myriad permits, approvals, entitlements, agreements, permits to enter, utility services, subdivision maps, building permits, and other authorizations in order to implement the Project, including but not limited to a ground lease (the "Ground Lease"), Loan Agreement, and Regulatory Agreement for a portion of the Project Site (together, the "Project Documents");

WHEREAS, the Project Documents, including the Disposition and Development Agreement and the Ground Lease, will help address the City's housing needs at a broad range of income levels by providing the City with 361 housing units, of which 181 units will be affordable to households with Area Median Income (AMI) levels ranging from 30% to 120%;

WHEREAS, notice of the public hearing on the proposed Project was published in the *Santa Clara Weekly*, a newspaper of general circulation for the City on January 16, 2019;

WHEREAS, on January 18, 2019, notices of the public hearing on the proposed Project were posted in three conspicuous locations within 300 feet of the Project Site and were mailed to all property owners within 1,000 feet of the Project Site, according to the most recent assessor's roll;

WHEREAS, the City Council has reviewed the Disposition and Development Agreement;

WHEREAS, before considering the Disposition and Development Agreement, the City Council reviewed and considered the information contained in the EIR (SCH# 2018042026), the CEQA Findings and the Statement of Overriding Considerations for significant unavoidable impacts in the areas of greenhouse gas emissions and traffic that cannot be avoided or substantially lessened by the adoption of feasible mitigation measures; and,

WHEREAS, on January 29, 2019, the City Council conducted a duly noticed public hearing, at which time all interested persons were invited to provide testimony and evidence, both in support of and in opposition to the proposed Disposition and Development Agreement.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the City Council hereby approves the Disposition and Development Agreement, substantially in the form attached hereto as Exhibit "Disposition and Development Agreement," subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.

3. That this Resolution, including the Disposition and Development Agreement approval described in Section 2 above, is based on the findings set forth above, the EIR, the EIR Resolution, the CEQA Findings Related to the Certification of the EIR, and the Rezoning.

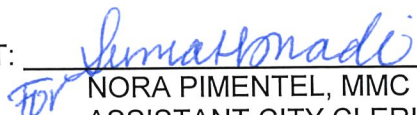
4. That the City Manager and/or designee is hereby authorized and directed to perform all acts to be performed by the City in the administration of the Disposition and Development Agreement pursuant to the terms of the Disposition and Development Agreement. The City Manager is further authorized and directed to perform all other acts, negotiate and enter into all other agreements (including a ground lease, loan agreements, deeds of trust, promissory notes, and affordable housing agreement) and execute all other documents and modifications to the Disposition and Development Agreement necessary or convenient to carry out the purposes of this Resolution and the Disposition and Development Agreement.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 29TH DAY OF JANUARY, 2019, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:	Chahal, Davis, Hardy, Mahan, O'Neill and Watanabe and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:


NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Disposition and Development Agreement

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

between the

THE CITY OF SANTA CLARA

and

CORE WINCHESTER, LLC

ATTACHMENTS

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

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (Agrihood - 1834 Worthington Circle, Santa Clara, CA 95050), dated for identification purposes only as of March 26, 2019, is entered into by and between the **CITY OF SANTA CLARA**, a California municipal corporation (“City”), and **CORE WINCHESTER, LLC**, a California limited liability company (“Developer”), with reference to the following:

RECITALS

The following recitals are a substantive part of this Agreement:

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

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

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

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

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

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

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

D. Developer shall develop the Property in accordance with the applicable conditions of approval issued by the City of Santa Clara.

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

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

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

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

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

1. DEFINITIONS

1.1. Defined Terms

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

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

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

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

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

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

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

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

“Affordable Housing Parcel” is defined in Recital C.

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

“Affordable Project” is defined in Recital D.

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

“Affordable Rent” means an amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum rent to be charged by Developer and paid by the Qualified Tenant occupying the Affordable Units as determined pursuant to the TCAC

Regulations. The tenant utility allowance shall be determined by the Housing & Community Services Division of the City. The calculation of Affordable Rent shall be performed annually.

"Affordable Units" is defined in Recital D.

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

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

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

"CC&Rs" is defined in Section 3.4.

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

"City Advance" is defined in Section 3.14.

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

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

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

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

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

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

“City Lender Policy” is defined in Section 3.5.2

“City Loan” is defined in Recital E.

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

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

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

“City Property” is defined in Recital C.

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

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

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

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

“Closing Notice” is defined in Section 3.3.

“Common Amenities Parcel” is defined in Recital C.

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

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

“Construction Contract” is defined in Section 5.3.

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

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

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

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

“County” means Santa Clara County.

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

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

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

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

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

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

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

“Entitlements” means and includes any and all general plan amendments, zoning approvals or changes, required approvals and certifications under the California Environmental Quality Act, tentative and final tract maps, variances, conditional use permits, demolition

permits, excavation/foundation permits, grading permits, building permits, inspection reports and approvals, certificates of occupancy, and other approvals, permits, certificates, authorizations, consents, orders, entitlements, filings or registrations, and actions of any nature whatsoever required from any applicable governmental authorities in order to commence and complete the construction of the Affordable Project or any of the proposed development on the Fee Parcels.

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

“Escrow” is defined in Section 3.3.

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

“Escrow Costs” is defined in Section 3.3.

“Event of Default” is defined in Section 7.1.

“Evidence of Financing” is defined in Section 5.1.

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

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

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

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

“Governmental Regulations” means any local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, Environmental Laws, labor relations, prevailing wage, notification of sale to employees, Hazardous Materials, occupational health and safety, water, earthquake hazard reduction and building and fire codes; and including

the National Environmental Policy Act (NEPA) and all Environmental Laws) bearing on the demolition, alteration, replacement, repair, refurbishing, improvement, construction, maintenance, management, use, or operation of the Affordable Project.

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

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

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

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

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

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

“Infrastructure Reimbursement” is defined in Section 3.15.

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

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

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

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

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

“Market Rate Parcel” is defined in Recital C.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Property” is defined in Recital C.

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

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

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

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

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

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

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

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

“State” means the State of California.

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

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

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

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

“Tax Credit Partnership” is defined in Recital E.

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

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

“TCAC” means the California Tax Credit Allocation Committee.

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

“Title Company” means Chicago Title Company.

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

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

1.2. Singular and Plural Terms

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

1.3. Accounting Principles

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

1.4. References and Other Terms

Any reference to any document shall include such document both as originally executed and as it may from time to time be modified. References herein to Sections and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and

encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms "including" and "include" mean "including (include), without limitation."

1.5. Attachments Incorporated; Attachments Additional Consideration

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

2. REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1. Representations by City.

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

2.1.1. Authority.

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

2.1.2. No Conflict.

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

2.1.3. No Litigation or Other Proceeding.

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

2.1.4. Eminent Domain.

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

2.1.5. Condition of City Property.

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

2.1.6. No Reversion of City Property.

The development of the "Proposed Master Development" (as defined in the State Grant Deed) commenced on or before the "Commencement of Development Date" (as defined in the State Grant Deed), and the City Property has not reverted to the State of California for disposal pursuant to the State Grant Deed.

2.1.7. No Default Under State Documents.

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

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

2.2. Representations by Developer.

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

2.2.1. Organization

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

2.2.2. Authority

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

2.2.3. Valid and Binding Agreements

This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will constitute when so executed and delivered, legal, valid and binding obligations of Developer enforceable against it in accordance with the terms of each respective document or instrument.

2.2.4. Litigation

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

2.2.5. No Conflict

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

2.2.6. No Developer Bankruptcy

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

2.2.7. Financing Summary; Project Pro Forma

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

Developer shall submit to the City for approval a Project Pro Forma within 60 days of the Effective Date. The Project Pro Forma and any written updates thereto provided to the City constitute Developer's reasonable estimates as of the date of the Project Pro Forma with respect to the information set forth therein, and shall include the Financing Summary and

any updates thereto. Developer shall submit to the City any changes or updates to the Project Pro Forma within 15 days of such change or update. To the actual knowledge of Developer after due inquiry, there are no material omissions from the Financing Summary or any updates thereto, and Developer agrees and acknowledges that the City is relying on the information set forth therein in making the City Loan.

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

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

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

2.3.1. Prohibition

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

2.3.2. Permitted Transfers by Developer

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

the party that takes title to the Mixed Income Parcel are hereby pre-approved as parties that may take title to the Common Amenities Parcel at Closing; provided that the City has reasonably approved the financing, operating and management plan with respect to the Common Amenities Parcel); and (II) any assignment or transfer of this Agreement to the foregoing parties taking title with respect to the applicable portion of the Property.

2.3.3. City Consideration of Requested Transfer

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

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

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

3. DISPOSITION OF SITE; ENVIRONMENTAL MATTERS

3.1. Transfer of the Property

The City is the owner in fee of the City Property. In consideration of payment of the Property Purchase Price and such other covenants and consideration as set forth in this Agreement, upon payment of the Property Purchase Price and the satisfaction or waiver of the City's Conditions Precedent to Closing, the City shall convey the Property to Developer.

Developer agrees to purchase the Fee Parcels and to enter into the Ground Lease and Ground Lease Memorandum upon satisfaction or waiver of Developer's Conditions Precedent to Closing. The Closing shall occur no later than the Outside Closing Date, subject to Events of Force Majeure. The City shall convey the Property to Developer by the Conveyance Documents and the Ground Lease. The City and Developer agree and acknowledge that the Property Purchase Price represents the fair market value of the Property.

3.2. Access; Condition of the Property; Environmental

3.2.1. Access to Property

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

3.2.2. Disclosure

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

3.2.3. Developer's Investigation of the Property

Developer has had full access to Property and the opportunity to obtain additional information and documentation as Developer deems necessary to evaluate the Property, to investigate and study the condition of the Property, and to make submissions and applications to all applicable governmental authorities with respect to the

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

3.3. Escrow

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

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

3.4. CC&Rs

Prior to the Closing date, Developer and the City shall agree upon (a) the allocation of any costs and expenses for the construction, development, operation and maintenance of common areas, common amenities, parking infrastructure and subdivision

improvements that will be used by the Affordable Project and any of the Fee Parcels, including any of the same that may be located on the Common Amenities Parcel, and (b) an open / common space and "Agrihood" operating plan and budget, which agreement shall be reflected in one or more written instruments to be recorded against the City's fee interest in the Affordable Housing Parcel and any applicable Fee Parcels, which instruments shall be referred to herein collectively as the "CC&Rs". At the election of the City, the City may record the CC&Rs against the City Property prior to the Closing. The CC&Rs shall also govern ownership and the transferability of the Common Amenities Parcel.

3.5. Title Insurance

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

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

3.6. Submittals into Escrow for the Closing

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

3.6.1 Submittals by Developer

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

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

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

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

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

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

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

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

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

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

3.6.2 Submittals by the City

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

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

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

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

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

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

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

(F) The Disbursement Agreement, if applicable.

(G) A non-foreign transferor certification in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and a California Form 593 certificate, each in a form acceptable to Developer and Escrow Agent and executed by City.

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

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

3.7. Conditions Precedent to Closing

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

3.7.1 The City's Conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

3.7.2 Developer’s Conditions

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

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

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

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

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

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

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

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

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

3.7.3 Close of Escrow.

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

3.7.4 Failure of Conditions to Close of Escrow.

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

3.8. Funding of the City Loan

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

3.9. Indemnification

Following the conveyance of the Property to Developer, Developer agrees to save, protect, defend, indemnify and hold harmless the City Indemnitees from and against any

and all Losses and Liabilities (including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, and remedial and response costs), but excluding the extent to which such Losses and Liabilities arises from the gross negligence or intentional misconduct of the City, the City Indemnitees, and/or their agents, representatives, invitees, licensees, consultants, and contractors, which may now or in the future be incurred or suffered by the City Indemnitees, by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (i) the ownership (or possession) of all or any part of the Property for purposes of any Governmental Regulations regulating Hazardous Materials with respect to any environmental or other condition of the Property relating to any Hazardous Materials not existing before the Closing and first released onto the Property and/or occurring following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees, (ii) any act or omission on the part of Developer, or its representatives, contractors, volunteers, or invitees with respect to the Property; (iii) the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person resulting from the negligence, intentional acts or omissions of Developer, its officers, agents, volunteers, contractors or employees, in the performance of its obligations under this Agreement, (iv) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials first released and/or occurring on the Property following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees, (v) any environmental or other condition of the Property relating to any Hazardous Materials not existing before the Closing and first released and/or occurring following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees. Developer's obligations under this Section shall survive the termination of this Agreement.

3.10. Occupants of the Property

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

3.11. Zoning of the Property

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

3.12. Release

On and after the Closing, Developer hereby waives, releases and discharges the City Indemnitees, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees), including any special or consequential damages, arising out of or in any way connected with the City's or Developer's use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, or the existence of Hazardous Materials contamination in any state on the Property, however the Hazardous Materials came to be placed there, except for those arising out of (i) the gross negligence, intentional misconduct, or fraud of the City or its employees, officers or agents, or (ii) any breach by City of this Agreement (including but not limited to breaches of representations and warranties of City expressly set forth herein) or the other agreements that City enters into pursuant to this Agreement, including but not limited to the Ground Lease and the City Loan Documents, and (iii) any third party breach of contract claim or third party tort claims brought against Buyer for personal injury, wrongful death or personal property damage, in each case arising out of events occurring during City's ownership of the Property. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." To the extent of the release set forth in this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

3.13. Existing Covenants on the Property

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

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

3.14. City Advance. Within five (5) business days of execution of this Agreement, Developer shall pay to City the amount of \$245,000 (the "**City Advance**"). The City Advance shall be credited toward the Property Purchase Price at the Closing. The City Advance shall be returned to Developer in connection with a termination of this Agreement arising from an Event of Default by the City. In addition to the City Advance, Developer shall deposit with the City

the amount of \$50,000 for estimated reasonable costs and expenses in connection with this Agreement, ancillary documents and the City Loan Documents and the transactions described therein, and shall be nonrefundable.

3.15. Infrastructure Reimbursement

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

3.16. Parks and Dwelling Unit Tax Requirements

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

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

4. FINANCING OF THE AFFORDABLE PROJECT

4.1. Sources of Construction Financing

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

4.2. The City Loan

4.2.1 Closing

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

4.2.2 Subordination of City Loan Documents

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

5. EVIDENCE OF FINANCING; CONSTRUCTION CONTRACT

5.1. Evidence of Financing

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

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

5.2. Construction Budget; Construction Loan

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

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

5.3. Construction Contract

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

6. COVENANTS AND RESTRICTIONS

6.1. Use Covenants

As set forth in the City Loan Agreement, Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Affordable Project or any part thereof, that the Affordable Project shall be used, maintained and operated in compliance

with the City Regulatory Agreement. Developer further covenants and agrees for itself and its successors and assigns that the Affordable Units shall be continuously occupied or held vacant and made available to Qualified Tenants at an Affordable Rent during the Affordability Period. All uses conducted on the Affordable Project, including, without limitation, all activities undertaken by Developer pursuant to this Agreement, shall conform to all applicable provisions of the Santa Clara City Code.

6.2. Nondiscrimination Covenants

As set forth in the City Loan Agreement, Developer covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Unit or the Affordable Project nor shall Developer establish or permit any such practice or practices of discrimination or segregation with reference to the location, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of the Affordable Project.

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

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

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

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

Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

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

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in connection with the performance of this contract nor shall the contracting party himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, contractors, subcontractors or vendees with respect to the premises."

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

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

6.3. Social Services

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

6.4. Leases and Service Contracts.

From the Effective Date hereof until the Closing, City shall not enter into any lease, contract, license or other delegation of right with respect the City Property that would either survive Closing or would reasonably be expected to have an material effect on the condition of the City Property after Closing. City shall also not cause nor voluntarily permit, any new lien, encumbrance or any matter to cause the condition of title to be changed in any way.

6.5. Interim Operation of City Property.

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

6.6. Cooperation.

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

7. **DEFAULTS, REMEDIES AND TERMINATION**

7.1. Defaults - General

Subject to Events of Force Majeure and any other extensions of time approved in writing by the parties, failure or delay by either party to timely perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement, at the time indicated in this Agreement, shall constitute a default under this Agreement. In addition to the foregoing, the following shall constitute a default hereunder: (a) Developer fails to perform an act by the time set forth therefore in the Schedule of Performance subject to Events of Force Majeure; or (b) a petition is filed in bankruptcy, or other bankruptcy or similar proceeding is

commenced by or against Developer under any applicable bankruptcy, insolvency or similar law now or hereafter in effect which is not released within ninety (90) days.

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

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

7.2. Remedies and Termination

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

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREUNDER, DEVELOPER AND THE CITY AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH THE CITY'S DAMAGE BY REASON OF DEVELOPER'S DEFAULT UNDER OR ELECTION TO TERMINATE THIS AGREEMENT. ACCORDINGLY, DEVELOPER AND THE CITY AGREE THAT IN THE EVENT OF A DEFAULT OR TERMINATION BY DEVELOPER UNDER THIS AGREEMENT, IT WOULD BE REASONABLE AT SUCH TIME TO AWARD THE CITY, AS THE CITY'S SOLE AND EXCLUSIVE REMEDY, "LIQUIDATED DAMAGES" EQUAL TO THE AMOUNT REPRESENTED BY THE CITY ADVANCE.

SUCH LIQUIDATED DAMAGES SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY FOR DEVELOPER'S EVENT OF DEFAULT OR ELECTION TO TERMINATE AND DEVELOPER SHALL HAVE NO OTHER OR FURTHER OBLIGATION OR LIABILITY TO THE CITY ON ACCOUNT OF SUCH DEFAULT OR BREACH (EXCEPT FOR INDEMNITY OBLIGATIONS WHICH SURVIVE TERMINATION OF THIS AGREEMENT AND PAYMENT OF ESCROW TERMINATION CHARGES). THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

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7.2.2. Developer Remedies for City Event of Default

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

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

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

7.2.4. Automatic Termination upon Outside Closing Date

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

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

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

Furthermore, effective as of the Closing, the surviving indemnification obligations of Developer hereunder with respect to each of the Parcels shall be several, and not joint; e.g. the obligations of Developer or its successor as to the Affordable Project shall not be

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

7.4. Limitation on Liability

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

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

7.5. Legal Actions

7.5.1. Institution of Legal Actions

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

7.5.2. Applicable Law

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

7.5.3. Acceptance of Service of Process

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

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

7.6. Rights and Remedies are Cumulative

To the extent permitted by law and except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are

cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by the other party.

7.7. Inaction Not a Waiver of Default

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

7.8. Post-Closing Termination as to Each of Parcels

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

7.8.1. Common Amenities Parcel

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

7.8.2. Market Rate Parcel

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

7.8.3. Mixed Income Parcel

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

7.8.4. Affordable Housing Parcel.

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

7.9. Attorneys' Fees

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

As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" means the fees and expenses of counsel to the parties hereto (including, without limitation, in-house or other counsel employed by the City or Developer) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney and fees and

costs for expert witnesses. The terms “attorneys’ fees” or “attorneys’ fees and costs” shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

8. GENERAL PROVISIONS

8.1. Notices, Demands and Communications Between the Parties

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

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

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

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

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

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

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

8.2. Conflicts of Interest

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

8.3. Warranty Against Payment of Consideration for Agreement

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

8.4. Nonliability of the City Officials and Employees

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

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

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

8.6. Approvals by the City and Developer

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

8.7. Force Majeure

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

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

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

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

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

8.8. Interpretation

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

8.9. Administration

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

8.10. Mutual Cooperation

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

8.11. Independent Contractor

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

8.12. Time

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

8.13. Third-Party Beneficiaries

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

9. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

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

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

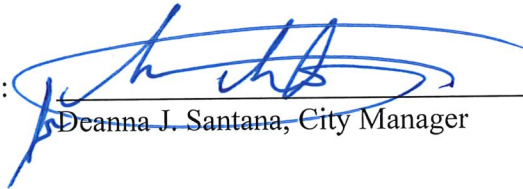
[SIGNATURES ON NEXT PAGE]

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

“CITY”

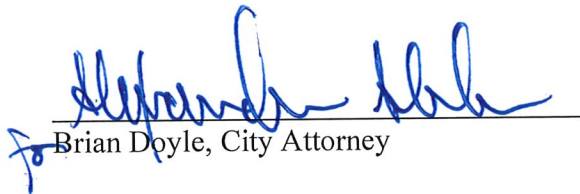
CITY OF SANTA CLARA,
a California municipal corporation

By:



Deanna J. Santana, City Manager

APPROVED AS TO FORM:



Brian Doyle, City Attorney

[SIGNATURE PAGE TO DISPOSITION AND DEVELOPMENT AGREEMENT]

[PAGE 1 OF 2]

“DEVELOPER”

CORE WINCHESTER, LLC,
a California limited liability company

By:


Chris Neale, Manager

[SIGNATURE PAGE TO DISPOSITION AND DEVELOPMENT AGREEMENT]

[PAGE 2 OF 2]

ATTACHMENT A

LEGAL DESCRIPTION

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

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

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

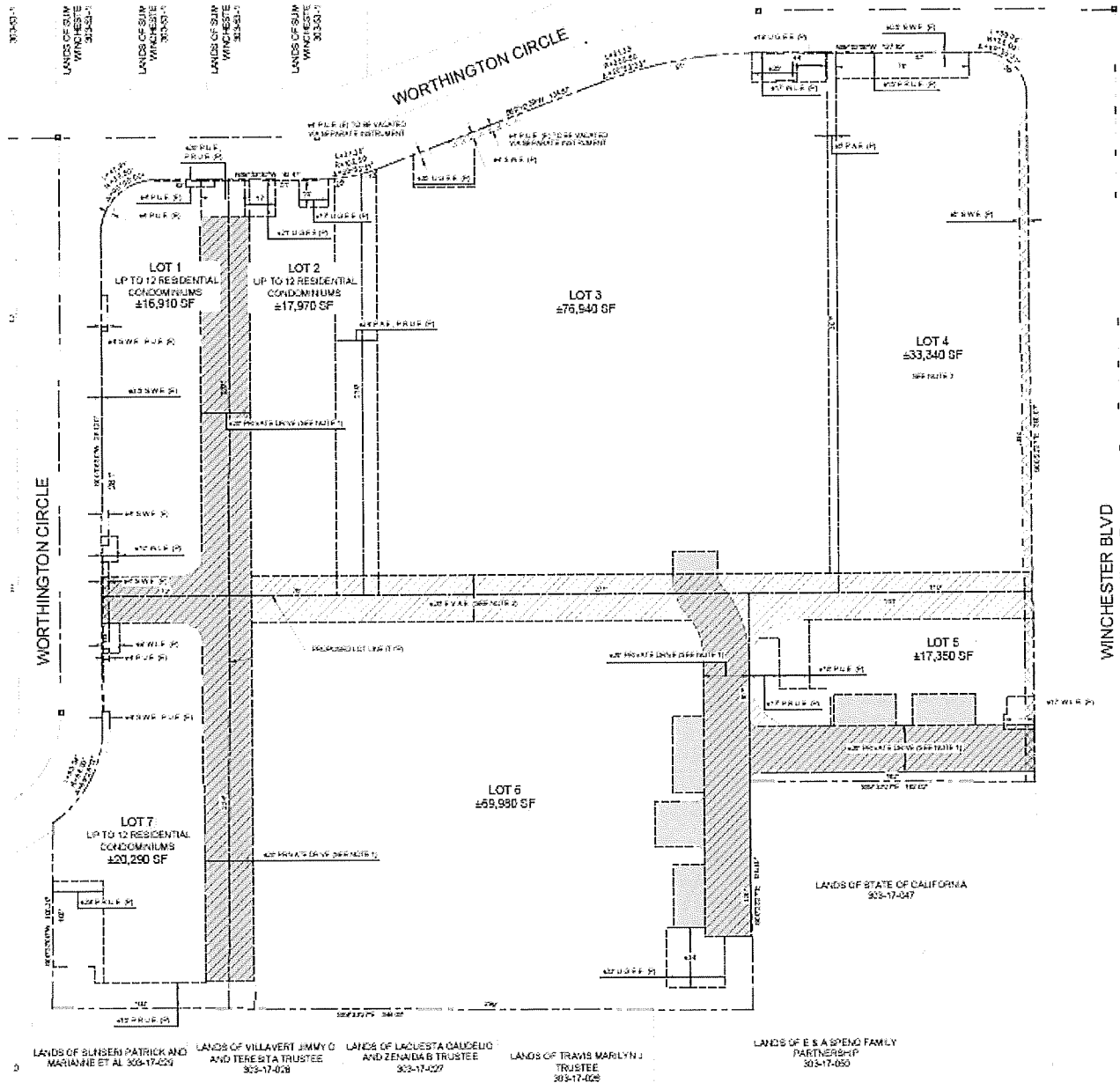
Assessor's Parcel Number: 303-17-053

[DESCRIPTIONS AND DEPICTIONS OF PARCELS FOLLOW]

ATTACHMENT A-1

DESCRIPTION OF MARKET RATE PARCEL

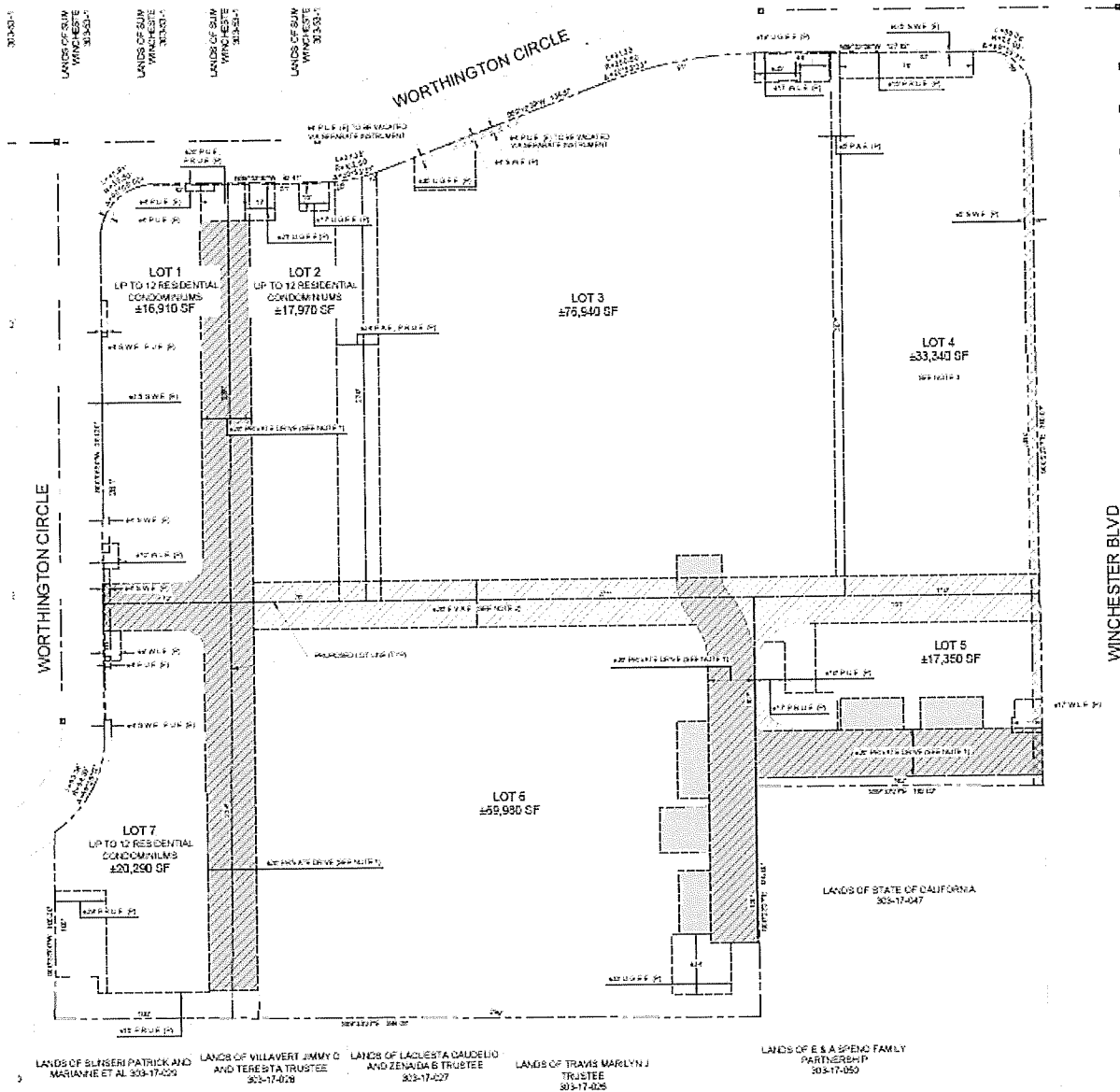
Lots 1, 2 and 7 as depicted below



ATTACHMENT A-2

DESCRIPTION OF MIXED INCOME PARCEL

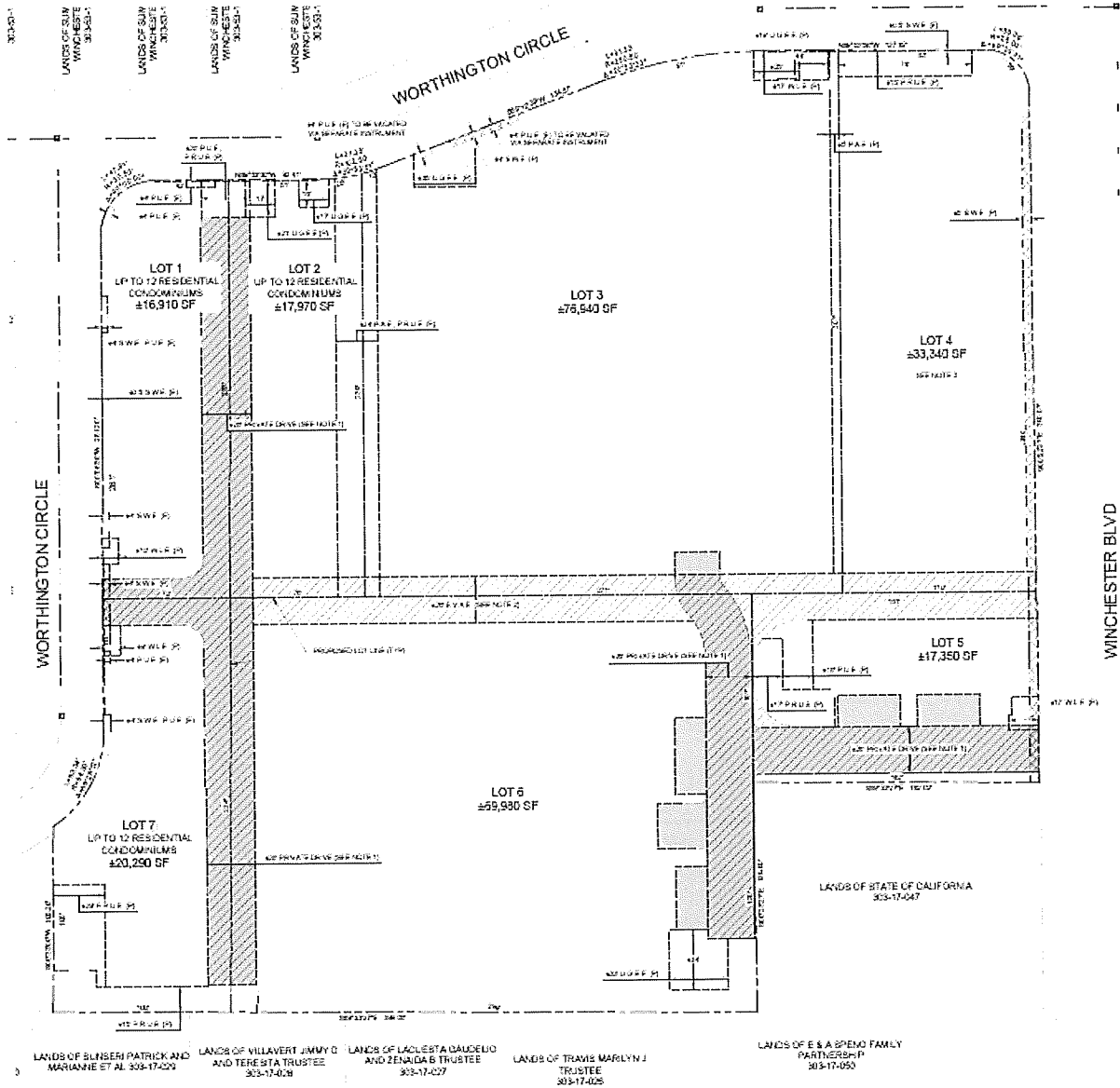
Lot 3 as depicted below



ATTACHMENT A-4

DESCRIPTION OF COMMON AMENITIES PARCEL

Lots 4 and 5 as depicted below



ATTACHMENT B

SCHEDULE OF PERFORMANCE

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

ATTACHMENT C

[RESERVED]

ATTACHMENT D
INSURANCE REQUIREMENTS

[attached]

ATTACHMENT E

FINANCING SUMMARY

CORE affordable

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

PROJECT DATA										
LAND				SITE, BUILDING AND UNIT DETAILS						
LAND	Acreage	1.51	acres	PARKING	# of residential spaces	99	AFFORDABILITY BREAKDOWN			
	Density	103	units/acre		residential parking ratio	0.6				
	# of Stories	5	total # parking spaces		99					
BUILDING				UNIT MIX						
				Unit Type	Avg. Rent	#Units	20%	40%	50%	60%
	Residential	91,347	sf	Studios/SRO	\$ 1,137	70	33	25	0	15
	Circulation and Common	17,751	sf	1-Bedroom	\$ 1,387	W1 Mngtr 64	24	27	0	32
	Commercial	-	sf	2-Bedroom	\$ 1,963	W1 Mngtr 11	0	0	0	0
	Podium Garage	29,006	sf	3-Bedroom	\$ -	0	0	0	0	0
				4-Bedroom	\$ -	0	0	0	0	0
				Total Units		166	64	64	0	66
				Average Affordability						23.4%

SOURCES				
Source Name	CONSTRUCTION SOURCES	PERMANENT SOURCES	PERMANENT SOURCES	
	TOTAL	TOTAL	per unit	
Construction Loan	\$ 41,030,555	\$ -	\$ -	
Amortizing Perm Loan, Tranche A	\$ -	\$ 8,713,900	\$ 52,612	
Amortizing Perm Loan, Tranche B	\$ -	\$ 7,590,300	\$ 46,032	
Santa Clara County Measure A	\$ 11,774,896	\$ 23,549,791	\$ 142,735	
Market Rate Land Sales Proceeds	\$ 15,262,000	\$ 15,262,000	\$ 92,497	
AHP	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
Other Source 4	\$ -	\$ -	\$ -	
Other Source 5	\$ -	\$ -	\$ -	
Other Source 6	\$ -	\$ -	\$ -	
Other Source 7	\$ -	\$ 61,000	\$ 370	
Tax Credit Investor Proceeds (Federal)	\$ 2,438,877	\$ 24,389,774	\$ 147,811	
Tax Credit Investor Proceeds (State)	\$ -	\$ -	\$ -	
GP Equity	\$ 2,440,000	\$ 2,440,000	\$ 14,788	
Deferred Developer Fee	\$ -	\$ 1,267,585	\$ 7,693	
TOTAL	\$ 72,858,342	\$ 88,278,360	\$ 604,887	

USES				
Acquisition	total	per unit	per SF	
Land	\$ -	\$ -	\$ -	
Other Acquisition Costs	\$ 290,945	\$ 1,763	\$ 2	
Total Acquisition Costs	\$ 290,945	\$ 1,763	\$ 2	
HARD COSTS				
Site Work and Structures	\$ 48,955,126	\$ 299,658	\$ 418	
Commercial Costs	\$ -	\$ -	\$ -	
Overhead & Profit/GC/Ins. Bond	\$ 7,346,257	\$ 44,523	\$ 63	
Owner Contingency	\$ 2,804,101	\$ 15,955	\$ 24	
Total Hard Costs	\$ 59,105,514	\$ 360,078	\$ 605	
SOFT COSTS				
Architecture and Engineering	\$ 5,123,313	\$ 31,231	\$ 44	
Construction Loan Interest and Fees	\$ 2,954,300	\$ 17,955	\$ 25	
Permanent Financing	\$ 233,042	\$ 1,412	\$ 2	
Legal Fees	\$ 505,000	\$ 3,067	\$ 5	
Reserves	\$ 546,357	\$ 3,315	\$ 5	
Permits and Fees	\$ 3,532,725	\$ 21,410	\$ 30	
Other Soft Costs	\$ 3,954,305	\$ 24,147	\$ 34	
Relocation	\$ -	\$ -	\$ -	
Developer Fee	\$ 6,857,555	\$ 41,561	\$ 59	
Total Soft Costs	\$ 23,876,657	\$ 144,700	\$ 204	
TOTAL DEVELOPMENT COSTS	\$ 83,278,360	\$ 604,887	\$ 711	

SCHEDULE			
MILESTONE	ESTIMATE	ACTUAL	
Entitlement			
Funding Committed			
Tax Credit Award			
Construction Start			
Construction Complete			
100% Occupied			
Permanent Conversion			
RIS Package			
SSOs			

FINANCING ASSUMPTIONS			
Debt Coverage Ratio			1.15
Term (Months):	28	Rate	4.9%
Term/Amort (Years):	35	Rate	5.1%

TAX CREDIT ASSUMPTIONS		
Price		0.93
130% Basis Boost?	No	
100% Tax Credit Eligible?	Yes	
State Credits	No	

DEVELOPER FEE		
Fee Paid		\$3,150,000
Deferred Amount		\$1,267,585
GP Equity		\$2,440,000
PAID TO PUBLIC LENDERS FROM CASH FLOW		
Santa Clara County Measure A	Pro-Rata Share	30%
Market Rate Land Sales Proceeds		30%
		\$3,582,450
		\$2,386,905
OPERATING AND SERVICES EXPENSE ASSUMPTIONS		
	Per Unit / Year	Annual
Total Residential Operating Expenses	\$ 6,300	Annual Escalation 3.5%
Resident Services Fee	\$ 500	
Ongoing Ap Maintenance	\$ 555	
Replacement Reserves	\$ 350	
Debt Admin Fees - Bond Issuer, M&A, Other		\$ 4,538

AFFORDABLE CASH FLOW - YEARS 1-5 and 16						
	2019	2020	2021	2022	2023	2023
Effective Gross Income	2,248,959	2,504,514	2,551,541	2,615,772	2,679,338	3,259,955
Operating Expenses	(1,035,457)	(1,075,838)	(1,113,452)	(1,152,454)	(1,192,800)	(1,532,553)
Services Expenses	(83,500)	(85,368)	(88,275)	(91,455)	(94,671)	(133,542)
Ag Services	(93,349)	(93,349)	(93,349)	(93,349)	(93,349)	(93,349)
Loan Admin Fees	(21,038)	(21,038)	(21,038)	(21,038)	(21,038)	(21,038)
Reserves	(57,750)	(57,750)	(57,750)	(57,750)	(57,750)	(57,750)
Net Operating Income	1,154,265	1,170,662	1,185,937	1,203,182	1,219,130	1,357,027
Debt Service (Tranche A)	(536,437)	(536,437)	(536,437)	(536,437)	(536,437)	(536,437)
Debt Service (Tranche B)	(467,257)	(467,257)	(467,257)	(467,257)	(467,257)	(467,257)
Debt Service HOD or Other	-	-	-	-	-	-
Cash Flow	150,562	165,948	185,233	199,388	215,435	353,323
DCR	1.15	1.17	1.18	1.20	1.21	1.36
Management Fees	7,000	7,245	7,459	7,751	8,033	11,331
Deferred Developer Fee	64,251	72,089	79,833	87,503	95,090	153,836
Partnership Management Fee	15,000	15,225	15,469	15,731	17,213	24,350
Services Paid from Cash Flow	-	-	-	-	-	-
Residual Receipts to Lenders	64,251	72,089	79,833	87,503	95,090	153,836
Incentive Management Fee	-	-	-	-	-	-
Other	-	-	-	-	-	-

ATTACHMENT F
PERMITTED EXCEPTIONS

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

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

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

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

Reference is hereby made to said document for full particulars.

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

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

6. Matters contained in that certain document

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

Executed by: State of California, through its duly appointed and qualified
Director of General Services and The Housing Authority of the
City of Santa Clara, a public body, corporate and politic

Recording Date: January 5, 2012

Recording No.: 21485774, of Official Records

Reference is hereby made to said document for full particulars.

Matters contained in that certain document

Entitled: State of California Modification of Grant Deed

Executed by: State of California Department of General Services Real Estate
Services Division and Housing Authority of the City of Santa
Clara, a public body, corporate and politic

Recording Date: January 4, 2017

Recording No: 23550600, of Official Records

Reference is hereby made to said document for full particulars.

ATTACHMENT G

GROUND LEASE

[attached]

GROUND LEASE

(_____)

by and between

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

and

_____,
Lessee

TABLE OF CONTENTS

Page

ATTACHMENTS

EXHIBIT A	-	LEGAL DESCRIPTION
EXHIBIT B	-	MEMORANDUM OF LEASE
EXHIBIT C	-	INSURANCE REQUIREMENTS

LEASE AGREEMENT

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

RECITALS

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

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

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

ARTICLE 1 FUNDAMENTAL INFORMATION

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

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

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

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

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

1.6 Landlord's address for notices:

City Manager's Office
The City of Santa Clara
1500 Warburton Avenue

Santa Clara, California 95050
Attention: City Manager

1.7 Lessee's address for notices:

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

With a copy to:
[Investor Limited Partner]

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

ARTICLE 2 TERMS AND PROVISIONS

2.1 AGREEMENT TO LEASE

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

2.2 ACCEPTANCE OF PROPERTY

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

2.3 TERM

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

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

2.3.3 Surrender. Subject to the damage and reconstruction provisions of Section 2.19, Lessee shall upon the expiration or sooner termination of this Lease immediately surrender the Property and the Improvements to Landlord in good and clean condition, ordinary wear and tear excepted, including any buildings, structures, improvements or additions located on the

Property. All personal property not removed by Lessee, shall, without compensation to Lessee, then become Landlord's property, free and clear of all claims to or against them by Lessee or any third person, firm or entity.

2.3.4 State Grant Deed Compliance and Reverter.

(a) Lessee acknowledges that the Property is subject to the State of California Grant Deed (Senior Housing Site) recorded against the Property (and other real property) in the Official Records of Santa Clara County on January 5, 2012 as document number 21485774, as modified by the State of California Modification of Grant Deed (Senior Housing Site) recorded against the City Property in the Official Records of Santa Clara County on January 4, 2017 as document number 25550600[, as modified by [any agreement with the State of California] (collectively, the “**State Grant Deed**”). Lessee hereby agrees to comply with the State Grant Deed to the extent it applies to the Property.

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

2.4 RENT

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

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

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

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

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

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

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

2.5 USE

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

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

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

2.5.4 All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or

through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land."

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

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

2.6 COMPLIANCE WITH LAW

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

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

2.7 ALTERATIONS AND ADDITIONS

2.7.1 Except as set forth in Section 2.5.2, above, after the completion of the initial Improvements, Lessee shall not make any alterations, additions, or improvements to or on the Property or any building or structure thereon or any part thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

2.8 REPAIRS

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

2.9 TAXES

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

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

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

2.10 CHANGE IN CONTROL OF LESSEE, ASSIGNMENT AND SUBLETTING

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

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

2.10.3 Except as provided in this Section 2.10, in Section 2.23 below, or in the Loan Agreement, the Lessee shall have no right to transfer, assign, sublease, convey or encumber its interests in the Property without the express prior written consent of Landlord. A consent by Landlord to one such transfer, assignment, sublease, conveyance or encumbrance shall not be deemed to be consent to any subsequent transfer, assignment, sublease, conveyance or encumbrance. Any transfer, assignment, sublease, conveyance or encumbrance not approved by

Landlord or not deemed approved pursuant to the terms of this Lease shall be void and shall constitute a breach of this Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

2.11 HOLD HARMLESS

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

2.11.2 Landlord or its agents shall not be liable for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from earthquake, fire, explosion, falling plaster, steam, gas, electricity, water, or rain which may leak from any part of the Property or from the pipes, appliances, or plumbing works therein or from the roof, street, or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligent or intentional acts or omissions of Landlord. Lessee shall give prompt notice to Landlord in case of fire or accidents in the Property or of defects therein or in the fixtures or equipment.

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

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

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

2.13 SUBROGATION

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

2.14 LIENS

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

2.15 INDEMNIFICATION AND INSURANCE

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

- (1) Commercial general liability policy (bodily injury and property damage);

- (2) Comprehensive automobile liability policy (to the extent the Lessee uses any vehicles); and
- (3) Workers' compensation and employer's liability policy (to the extent Lessee has any employees).

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

2.16 UTILITIES

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

2.17 HOLDING OVER

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

2.18 ENTRY BY LANDLORD

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

2.19 DAMAGE, RECONSTRUCTION

2.19.1 In the event the Property is damaged by fire or other perils covered by extended coverage insurance, Lessee shall have the right to use all available insurance proceeds to repair or rebuild the Improvements. If the estimated cost of repairs is not in excess of available insurance proceeds, then Lessee shall forthwith repair the same (using the insurance proceeds to pay the cost of such repair) and this Lease shall remain in full force and effect.

2.19.2 (a) In the event the Property is damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, or the estimated cost of repairs is in excess of available insurance proceeds, then Lessee shall notify Landlord in writing of the amount by which the estimated cost of repairs exceeds such proceeds (the "**Shortfall**"), and Lessee shall have the right, within ninety (90) days after receipt of such notice, to elect to provide the Shortfall

and proceed with such repairs (using the insurance proceeds and such other funds as Lessee may provide to pay the Shortfall), in which case this Lease shall continue in full force and effect.

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

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

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

2.20 DEFAULT

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

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

2.20.3 If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the complaining party shall give party in default written notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is

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

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

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

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

2.20.7 Mediation. Any controversies between Landlord and Lessee regarding the construction or application of this Lease, and claims arising out of this Lease or its breach, shall be submitted to mediation within thirty (30) days of the written request by one party after the written notice of that request on the other party.

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

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

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

2.21 EMINENT DOMAIN

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

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

2.22 HAZARDOUS MATERIALS

2.22.1 Lessee shall not:

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

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

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

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

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

2.23 RIGHTS OF LEASEHOLD MORTGAGEES 2.23.1 DEFINITIONS

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

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

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

(d) "**Development Costs**" means costs incurred by Lessee for the development of the Property and construction of the Improvements to the extent set forth as "**Total Development Costs**" in the approved Project Budget, which shall be subject to adjustment following Completion (the "**Adjusted Project Budget**") to reflect the final Development Costs set forth in the Cost Certification prepared and submitted to Landlord pursuant to the Affordable Housing Agreement.

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

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

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

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

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

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

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

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

(ii) any one or a combination of the following lending institutions authorized under applicable California or federal law to make mortgage loans and not under any order or judgment of any court or administrative authority restricting or impairing its operation as a lender: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association; or

(iii) any company engaged in the ordinary course of business as a lender with a net worth or assets of not less than \$50,000,000, which is duly licensed or registered (if legally required) with any regulatory agency having jurisdiction over its operation, and is not under any order or judgment of any court or administrative authority restricting or impairing its operation as a lender, including, without limitation, the following: a real estate investment trust;

an educational institution; a pension, retirement or welfare fund; a charity; or an endowment fund or foundation authorized to make loans in the State of California; or

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

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

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

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

2.23.3 REFINANCING LOAN.

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

(b) In addition to the requirements set forth in Section 2.23.2, the following shall apply to any Permitted Leasehold Mortgage that secures a Refinancing Loan: At any time and from time to time during the Term, notwithstanding anything contained in this Lease to the contrary, including, without limitation, Section 2.14 above, Lessee shall have the right to enter into a Leasehold Mortgage for the purpose of securing a Refinancing Loan, upon and subject to each and all of the following terms and conditions, subject to the reasonable consent of Landlord, which consent Landlord shall grant so long as the proposed Refinancing Loan satisfies all of the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Suspension of Cure Period. If any Permitted Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, the times specified in paragraph (d) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, so long as the Permitted Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently those monetary obligations as and when the same fall due, subject to any applicable notice and grace periods.

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

(h) No Consent Required to Foreclosure. Notwithstanding anything contained in this Lease to the contrary, foreclosure of any Permitted Leasehold Mortgage, or any

sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Leasehold Mortgage, or any conveyance of the Lessee's Leasehold Interests hereunder from Lessee to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize in writing the purchaser or other transferee referred to in the preceding sentence in connection therewith as the Lessee hereunder. Further, following such foreclosure or conveyance, any assignment or subleasing by the purchaser or other transferee shall not require the consent of Landlord, despite any other provisions of this Lease to the contrary.

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

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

(k) Further Protections. Landlord and Lessee shall cooperate in including in this Lease, by suitable amendment from time to time, any provision which may be reasonably requested by any proposed Permitted Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 2.23 and allowing such Permitted Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease. Landlord and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that no such amendment shall in any way affect the Term or rent or Option under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

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

2.23.6 NOTICE. If Lessee and/or Lessee's successors and assigns shall mortgage its interest in this Lease or the Lessee's Leasehold Interests, or any part or parts thereof, Lessee shall send or cause to be sent to Landlord a true copy thereof, together with written notice

specifying the name and address of the Leasehold Mortgagee(s) and the pertinent recording data with respect to such Leasehold Mortgage(s).

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

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

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

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

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

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

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

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

(viii) Unless and until Landlord has received notice from any Permitted Leasehold Mortgagee that the Permitted Leasehold Mortgagee elects not to demand a new lease as provided in this Section 2.23.7, or until the period therefor has expired, Landlord

shall not cancel or agree to the termination or surrender of any existing subleases, nor enter into any new subleases hereunder without the prior written consent of the Permitted Leasehold Mortgagee.

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

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

2.24 RESTRICTION ON ENCUMBRANCE BY LANDLORD

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

2.24.2 Prior to obtaining any loan secured by a Fee Mortgage, Landlord shall notify Lessee in writing ("**Landlord's Notice**") and provide Lessee an opportunity to make the loan to Landlord, as provided in this Section 2.24.2. Landlord's Notice shall contain the following: (i) a statement that Landlord has obtained from a lender a bona fide statement of interest in making a Fee Mortgage loan to Landlord (or a comparable contingent commitment from a lender, underwriter or other entity relating to any proposed financing to be secured by a Fee Mortgage, as may be appropriate to the particular form of the proposed financing); (ii) the terms of the proposed Fee Mortgage loan ("**Proposed Terms**"); and (iii) a reasonable time period, not less than thirty (30) days after Landlord's Notice (the "**Offer Period**"), for Lessee to offer, in writing, to make the loan to Landlord. If, prior to the end of the Offer Period, Lessee submits to Landlord a written offer to make a loan on terms that are essentially the same as, or better than, the Proposed Terms, Landlord shall not obtain the Fee Mortgage loan described in Landlord's Notice. In that event, subject to all requisite approvals by Landlord's governing body, Landlord shall have the right, but not the obligation, to accept Lessee's offer. If, prior to the end of the Offer Period, Lessee fails to submit a written offer to make a loan on terms that are essentially the same as, or better than, the Proposed Terms, Landlord shall have the right to obtain the proposed Fee Mortgage loan.

2.24.3 THE PROVISIONS OF THIS LEASE DO NOT GIVE TO LESSEE OR ANY PERSON WHATSOEVER OTHER THAN LANDLORD THE RIGHT TO MORTGAGE, HYPOTHECATE OR OTHERWISE TO ENCUMBER OR TO CAUSE ANY LIENS TO BE PLACED AGAINST THE FREEHOLD ESTATE OF LANDLORD, NOR SHALL SAID

PROVISIONS BE CONSTRUED AS RESULTING IN A SUBORDINATION IN WHOLE OR IN PART OF THE FREEHOLD ESTATE OF LANDLORD OR LANDLORD'S RIGHT TO RECEIVE RENT TO ANY INDEBTEDNESS OF LESSEE.

2.25 QUIET ENJOYMENT

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

2.26 GENERAL PROVISIONS

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

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

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

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

2.26.5 In addition to specific provisions of this Lease, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, floods, earthquakes, fires, casualties, Acts of God, epidemics, quarantine restrictions, governmental restrictions or priority, unusually severe weather, inability to secure necessary labor, materials or tools, acts of the other party, acts or failure to act of the City or any other public or governmental Landlord or entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Times of performance under this Lease may also be extended in writing by mutual agreement of the parties.

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

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

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

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

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

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

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

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

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

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

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

[Signatures appear on next page.]

“LANDLORD”

[Signatures continue on next page.]

“LESSEE”

Exhibit "A"

LEGAL DESCRIPTION

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

[to be inserted]

Exhibit "B"

MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

MEMORANDUM OF LEASE

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

1. Landlord hereby leases the real property described on Exhibit A attached hereto ("**Property**") to Lessee and Lessee hereby accepts tenancy of the Property from Landlord for a term (the "**Term**") commencing on the date that this Memorandum is recorded in the Official Records of the County of Santa Clara and shall continue for fifty-five (55) years after the issuance of the temporary certificate of occupancy for the Improvements (as defined therein), unless earlier terminated as provided in the Lease. Concurrently herewith, Landlord and Lessee have entered into that certain Lease Agreement (the "**Lease**") with respect to the Property.
2. The provisions of the Lease to be performed by Lessee, whether affirmative or negative in nature, are intended to and shall bind Lessee and its successors and assigns at any time, and shall inure to the benefit of Landlord and its successors and assigns.
3. The provisions of the Lease to be performed by Landlord, whether affirmative or negative in nature, are intended to and shall bind Landlord and its successors and assigns at any time, and shall inure to the benefit of Lessee and its successors and assigns.
4. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Lease.
5. Reference is hereby made to the entire Lease for any and all purposes. A true copy of the Lease is on file in the office of the Landlord, at its offices located at 1500 Warburton Avenue, Santa Clara, California 95050.

“LANDLORD”

[Signatures continue on next page.]

“LESSEE”

Exhibit "A"

LEGAL DESCRIPTION

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

Exhibit “C”

INSURANCE REQUIRMENTS

[Behind this Page.]

ATTACHMENT H
MEMORANDUM OF GROUND LEASE

[Attached to Ground Lease]

ATTACHMENT I
CITY LOAN AGREEMENT

[attached]

LOAN AGREEMENT

(SENIOR AFFORDABLE HOUSING PROJECT)

by and between

THE CITY OF SANTA CLARA,

and

Borrower

LOAN AGREEMENT

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

PART 1. SUBJECT OF AGREEMENT

Section 1.1 Purpose of Agreement

a. Concurrently with the execution of this Agreement, (I) City and Borrower have entered into that certain Ground Lease (the “**Lease**”) pursuant to which City is leasing to Borrower an approximately 1.60 acre parcel (the “**Affordable Property**”) described on Attachment No. 1-A hereto for the construction and operation of 165 units of housing to be leased as follows: [(a) 59 units to be leased to 30% AMI Households; (b) 55 units to be leased to 40% AMI Households; (c) 17 units to be leased to 50% AMI Households; (d) 32 units to be leased to 80% AMI Households;] [NOTE: TO BE UPDATED AS NECESSARY PRIOR TO CLOSING] and (e) 2 units to be leased to 120% AMI Households, provided that units to be leased to 120% AMI Households may be used as one or more resident apartment manager’s units (the “**Management Unit(s)**”) to the extent required under applicable law; and (II) Borrower has acquired from City an approximately 1.16 acre parcel (the “**Agrihood Property**”; together with Borrower’s interest in the Affordable Property, the “**Property**”) described on Attachment No. 1-B hereto for the construction and operation of open, common and agricultural space and certain other improvements described in the Scope of Development (collectively, the “**Agrihood**”). The foregoing units to be developed on the Property, excluding any Management Units, are referred to herein as the “**Affordable Units**”. Each Affordable Unit is to be leased to a “senior citizen”, as defined in Civil Code Section 51.3(b)(1), and veterans shall be given a preference to lease 30% of the Affordable Units. Borrower’s leasehold interest in the Affordable Property pursuant to the Lease, fee interest in the Agrihood Property and fee interest in the improvements to be constructed on the Property (including the Agrihood, Affordable Units and the Management Units), together with the development thereof in accordance with this Agreement, is referred to herein as the “**Project**”.

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

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

Section 1.2 Definitions

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

"City" shall mean the City of Santa Clara, California

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“County” means Santa Clara County.

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

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

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

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

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

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

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

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

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

whatsoever required from any Governmental Authority in order to commence and complete the construction of the Project.

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

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

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

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

“Improvements” means and includes any buildings, structures, fixtures, foundations, excavation, parking, landscaping, or underground installations to be constructed on, under, or over the Property pursuant to the Scope of Development and in accordance herewith, including, without limitation, the Affordable Units and the Agrihood.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Permitted Transfer” means any of the following:

- a. An assignment of this Agreement and all of Borrower’s interests in the Property to an Affiliate;
- b. A conveyance of a security interest in the Property or any portion thereof or interest therein or interest in the Borrower in connection with any Senior Loan and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith;
- c. The inclusion of equity participation in the Borrower by addition of limited partners to Borrower’s partnership or similar mechanism, and any transfers of limited partnership interests in Borrower’s partnership;
- d. The lease for occupancy of all or any part of the Improvements on the Property;
- e. The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement;

f. The withdrawal, removal and/or replacement of a general partner of Borrower pursuant to the terms of the Borrower's partnership agreement, provided that any required substitute general partner is reasonably acceptable to City and is selected with reasonable promptness. The Investor Limited Partner or an Affiliate thereof is an acceptable successor general partner of Borrower;

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

h. The sale, transfer or pledge of any limited partnership interest in Borrower or of any partnership interest in the Investor Limited Partner;

i. A Refinancing Loan in accordance with Section 2.23.3 of the Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“TCAC” means the California Tax Credit Allocation Committee.

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

“Title Company” means Chicago Title Company.

Section 1.3 The Property

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

Section 1.4 City

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

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

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

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

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

Section 1.5 Borrower

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

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

With a copy to:

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

With a copy to:

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

Section 1.6 Assignments and Transfers

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

Except for Permitted Transfers, the Borrower shall not assign all or any part of this Agreement without the prior written approval of the City. The City agrees to reasonably give such approval if in the reasonable determination of the City, the proposed assignee is comparable in all material respects (including experience, character and financial capability) to the Borrower. Any such change (or assignment of this Agreement in connection therewith) shall be by instruments satisfactory to the City, and be subject to the approval by the City of evidence of the proposed assignee's qualifications to meet the obligations of the Borrower under this Agreement.

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

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

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

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

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

PART 2. CITY LOAN

Section 2.1 City Loan

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

Section 2.2 Disbursement

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

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

Section 2.3 Retention

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

Section 2.4 Subordination

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

Section 2.5 Construction Loan

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

Section 2.6 Change Orders

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

Section 2.7 Draw Requests

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

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

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

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

Section 2.8 No Prepayment of Junior Debt

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

Section 2.9 No Pledging of City's Credit

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

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

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

Section 2.11 Ground Breaking and Grand Openings

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

PART 3. DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Approvals; Land Use Restrictions

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

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

Section 3.2 Permits and Entitlements

Prior to commencement of any work of improvement upon the Project, Borrower shall, at its own expense, secure or cause to be secured any and all permits, entitlements or approvals which may be required by the City in accordance with the Santa Clara City Code and land use entitlement process and by any other governmental entity with jurisdiction over the Project in accordance with applicable Governmental Regulations. The execution of this Agreement does not constitute the granting of or a commitment to obtain or grant any required land use entitlements or approvals required by the City.

Section 3.3 Condition of the Property

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

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

Section 3.4 Scope of Development; Modification of Closing Requirements

The Property shall be developed in accordance with and within the limitations established in the Scope of Development attached to this Agreement as Attachment No. 3 and the permits issued by the City for the Project, and in accordance with all applicable Closing Requirements approved by the City. The Scope of Development shall not be modified or amended except with the prior written consent of the City. Borrower shall not modify the Closing Requirements, or any matter approved by the City pursuant to the Closing Requirements, without the prior written

approval of the City. Notwithstanding the foregoing, written approval of the City (which shall not be unreasonably withheld, delayed or conditioned) shall be required for any of the following, and shall not be delegated under the Disbursement Agreement or to any other party:

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

Section 3.5 Design; Architectural Quality

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

Section 3.6 Cost of Construction

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

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

Section 3.7 Schedule of Performance; Construction of Improvements

Borrower shall begin and complete all construction and development within the times specified in the Schedule of Performance, with such reasonable extensions of said times as may be granted by the City and subject to Force Majeure Delay. The Schedule of Performance is

subject to revision from time to time as mutually agreed upon in writing by Borrower and City. In the event that the sum of the proceeds of the City Loan available for disbursement together with any other sources to complete the construction of the Improvements are, or at any time become, in the reasonable judgment of the City, insufficient to pay all costs to achieve Completion in accordance with this Agreement, then Borrower will pay such costs.

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

Section 3.8 Construction Contract

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

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

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

Section 3.9 Subcontracts

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

Section 3.10 Role of Architect

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

Section 3.11 [Intentionally deleted.]

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

Borrower shall cause the construction of the Project and the payment of all wages in connection therewith to be in accordance with the provisions of California Labor Code §§ 1720 through 1861 (collectively, the “**Prevailing Wage Law**”) as if compliance with the Prevailing Wage Law were required under applicable law, even if the Prevailing Wage Law would not otherwise, as a matter of law, be applicable to the construction and development of the Project. Borrower agrees and acknowledges that failure to comply with this paragraph shall be a default hereunder.

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

Section 3.13 Compliance with Law

Borrower shall comply with all Governmental Regulations in the construction, use and operation of the Project, including all applicable federal, state and local statutes, ordinances, regulations and laws, including without limitation, all applicable federal, state, and local labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Santa Clara City Code, and all applicable disabled and handicapped access requirements, including without limitation (as currently exists or may be

amended from time to time) the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq., Government Code § 4450, et seq., and Government Code § 11135, et seq.

Section 3.14 Nondiscrimination During Construction

Borrower certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all contractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b, et seq., 42 U.S.C. § 1981, the California Fair Employment and Housing Act, Government Code § 12900, et seq., the California Equal Pay Law, Labor Code § 1197.5, Government Code § 11135, the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (applicable to those with fifteen (15) or more employees), Executive Order 11246-Equal Employment Opportunity, as amended, its implementing regulations at 41 CFR Part 60, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Nondiscrimination notices shall be included in all job postings and posted in a visible place in the offices of all applicable parties.

Section 3.15 General Indemnity

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

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

Section 3.16 Insurance Requirements

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

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

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Attachment No. 4 entitled "Insurance Requirements" attached hereto.

Section 3.17 Disclaimer of Responsibility by the City

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

Section 3.18 Rights of Access

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

Section 3.19 Taxes and Assessments

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

or (b) contesting the validity or amount of any tax assessment, encumbrance or lien, or to limit the remedies available to the Borrower in respect thereto.

Section 3.20 Liens and Stop Notices

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

Section 3.21 Rights to Architectural Agreements and Plans and Specifications

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

Section 3.22 Security Financing; Right of Holders

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

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

(c) Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure Whenever the City will deliver any notice or demand to Borrower with respect to any breach or default by Borrower in completion of construction of the Improvements, the City will at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest recorded against the Project, provided that failure to provide such notice shall not affect the City's remedies hereunder. Each holder will (insofar as the rights of the City are concerned) have the right at its option within thirty (30) calendar days after the receipt of the notice, to cure or remedy or commence to cure or remedy any default and to add the cost to the

security interest debt and the lien on its security interest. Nothing contained in this Agreement will be deemed to permit or authorize the holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed Borrower's obligations to the City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform the obligations. Any holder properly completing the Improvements will be entitled, upon written request made to the City, to a Release of Construction Covenants from the City.

Section 3.23 Liens on Personal Property

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

Section 3.24 Removal of Personal Property

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

Section 3.25 Release of Construction Covenants

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

acquiring any interest in the Project shall not (because of such ownership, purchase, lease or acquisition) incur any construction obligation or liability under this Agreement.

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

If the City refuses or fails to furnish a Release of Construction Covenants for the Property after written request from Borrower, the City shall, within thirty (30) days of the written request, provide Borrower with a written statement of the reasons the City refused or failed to furnish a Release of Construction Covenants. The statement shall also contain the City's opinion of the action Borrower must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, and/or minor items, the City will issue its Release of Construction Covenants upon the posting of a bond by Borrower with the City in an amount representing a fair value of the work not yet completed.

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

Section 3.26 Developer Fee

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

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

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

PART 4. SALES AND USE TAX.

Borrower shall use- commercially reasonable efforts to. adopt sales and use tax reporting procedures allowable under applicable law that will provide City (in its capacity as a Governmental Authority) the greatest allocation of California sales and use tax revenues feasible, and shall cause their general construction contractors, vendors and occupants of the Improvements to use commercially reasonable, efforts to adopt these procedures, including by designating the Property as the place of sale and place of use of materials, goods, and services to be used in connection with the construction and operation of the Project. Borrower shall propose to City for its reasonable approval a process that will designate the Property as the place of sale of fixtures furnished and installed by Borrower for the Project, and to do the same with respect to construction materials used in connection with the Improvements. Notwithstanding the foregoing, the failure of such general construction contractors, vendors and Improvement occupants to allocate sales and use tax revenues to the City shall not constitute a breach by Borrower under this Agreement. Borrower shall bear all costs associated with their obligations under this Part 4. [Borrower shall comply with the Provisions Relating to Construction Sales and Use Tax Allocations attached hereto as Attachment No. 8[?].]

PART 5. USE OF THE PROPERTY

Section 5.1 Use Covenants

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

Section 5.2 Affordable Housing Requirements

5.1.1. Affordable Units

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

5.1.2. Duration of Affordability Requirements

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

5.1.3. Selection of Qualified Tenants

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

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

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

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

5.1.4. Income Requirements

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

5.1.5. Lease Requirements

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

5.2. Long Term Management of the Project

Borrower and the Property Manager shall enter into a written agreement regarding the services of the Property Manager (the "**Management Agreement**"). Property management fees paid to the Property Manager shall not exceed six percent (6%) of gross rents on an annual basis. The Management Agreement shall contain, inter alia, an express provision (a) obligating the Property Manager to cooperate fully with the City with respect to the on-site inspections to be made by the City pursuant to the City Regulatory Agreement, and (b) indicating that the term

thereof shall not exceed twelve (12) months including a provision for termination by Borrower with or without cause at any time upon notice not to exceed thirty (30) days.

Prior to the issuance of the Certificate of Occupancy, Borrower shall submit to the City a Management Plan reasonably acceptable to the City, describing the proposed plans for managing and operating the Property. Borrower shall manage and operate the Property in accordance with the approved Management Plan, including such amendments as may be approved in writing from time to time by the Borrower and the City, for the entire Restricted Period.

5.3. Annual Budget and Quarterly Reporting

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

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

Section 5.3 Maintenance of the Property

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

The Maintenance Program shall describe in reasonable detail the standards to be followed in maintaining the interior and exterior of the Improvements, including a schedule indicating the proposed frequency of each element of maintenance, and shall include, at a minimum, the following: periodic cleaning of the interior and exterior of the Improvements, including windows; removing graffiti; removing debris and waste materials and otherwise maintaining indoor and outdoor areas of the Property; maintaining any lawns, plants, shrubs and trees or other landscaping planted on the Property; performing inspections of all exterior features to determine whether repairs are required; conducting periodic protective treatments such as rust removal and caulking; conducting repairs to facades, roof, doors, windows and other exterior features; maintaining

fencing and other security devices and systems; periodic repainting of the exterior; periodic repainting of the interior units and common areas; periodic replacing of the interior unit carpets; checking building systems, including, but not limited to the heating and cooling systems, smoke alarms and water heaters; checking interior unit appliances; and monitoring interior unit bathrooms for mold/mildew. The Maintenance Program, including any amendments proposed by the Borrower, shall be subject to the reasonable approval of the City.

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

Section 5.4 Nondiscrimination Covenants

Borrower covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Unit or the Project nor shall Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the location, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of the Project.

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

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

- a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code,

as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

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

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

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

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in connection with the performance of this contract nor shall the contracting party himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, contractors, subcontractors or vendees with respect to the premises.”

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

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

Section 5.5 Conflict with the City Regulatory Agreement

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

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

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

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

(d) Replacement Reserves. If requested by any Senior Lender, Borrower covenants and agrees to fund a replacement reserve in a capitalized amount as of the Conversion from operating income on monthly basis in amount required by the Senior Lender (“**Replacement Reserve**”). Such amounts shall be held in a separate interest-bearing trust account. Funds in the Replacement Reserve shall be used solely to cover capital replacements for the Project. All

withdrawals from the Replacement Reserve are subject to the prior written consent of the City, which such consent shall not be unreasonably withheld or delayed.

Section 5.7 Social Services

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

Section 5.8 Hazardous Substances

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

Section 5.9 Monitoring Fee

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

Section 5.10 Termination of State Development Agreement.

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

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

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

PART 6. DEFAULTS, REMEDIES, AND TERMINATION

Section 6.1 Defaults — General

Subject to the Force Majeure Delay and any extensions of time approved in writing by the parties, failure or delay by either party to perform any term or provision of this Agreement at the time indicated in this Agreement constitutes a default under this Agreement. As provided, hereinbelow, the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

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

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

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

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

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

Section 6.2 Institution of Legal Actions

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

Section 6.3 Applicable Law

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

Section 6.4 Acceptance of Service of Process

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

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

Section 6.5 Rights and Remedies Are Cumulative

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

Section 6.6 Damages

If either party defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 6.1 and the non-recourse provisions of Section 6.10, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default,

and the non-defaulting party may, after such notice and opportunity to cure (but not before) commence an action for damages against the defaulting party with respect to such default. Notwithstanding the foregoing, neither Borrower nor City shall have the right to recover any punitive, consequential, or special damages.

Section 6.7 Specific Performance

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

Section 6.8 Termination by Either Party

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

Section 6.9 Automatic Termination

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

Section 6.10 Limited Recourse Obligations After Conversion

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

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

Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by the City Note or the City Deed of Trust; (b) limit the right of the City to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under the City Note or the City Deed of Trust or any action or proceeding thereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Borrower; (c) release or impair the City Note or the City Deed of Trust; (d) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing the City Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing the City Note; (f) relieve Borrower of any of its obligations under any indemnity delivered by Borrower to City; or (g) affect in any way the validity of any guarantee or indemnity from any person other than the Borrower of all or any of the obligations evidenced and secured by

the City Note or the City Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Borrower shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Borrower, its principals, shareholders, partners received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the Property, ordinary and reasonable capital improvements to the Property, debt service, real estate taxes in respect of the Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, City may recover directly from Borrower or from any other party:

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

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

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

Section 6.11 Borrower Representations and Warranties

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

and neither the Borrower nor its general partners will enter into any such agreements after the date hereof.

PART 7. GENERAL PROVISIONS

Section 7.1 Notices

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

Section 7.2 Conflicts of Interest

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

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

Section 7.3 Nonliability of City Officials and Employees

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

Section 7.4 Force Majeure

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

Section 7.5 Inspection of Books and Records

The Borrower shall maintain complete, accurate, and current records pertaining to the Property for a period of five (5) years after the creation of such records, and shall permit any duly

authorized representative of the City to inspect and copy records, during regular business hours upon reasonable advance notice. Records must be kept accurate and current.

Section 7.6 Approvals

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

Section 7.7 Administration

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

Section 7.8 No Third Party Beneficiaries

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

Section 7.9 Reimbursement of Expenses

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

Section 7.10 Borrower Authority

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

Section 7.11 No Partnership

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

Section 7.12 Compliance with Law

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

Section 7.13 Binding Effect

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

Section 7.14 Incorporation by Reference

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

Section 7.15 Counterparts

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

Section 7.16 Mutual Cooperation

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

Section 7.17 Construction and Interpretation of Agreement

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

If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent

jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

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

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

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

PART 8. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

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

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

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

[Signatures appear on next page.]

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

“CITY”

CITY OF SANTA CLARA,
a California municipal corporation

By: _____
Name: _____
Its: _____

Date: _____

APPROVED AS TO FORM:

Brian Doyle, City Attorney

[SIGNATURE PAGE TO LOAN AGREEMENT]

[PAGE 1 OF 2]

“BORROWER”

_____,

By: _____

Date: _____

[SIGNATURE PAGE TO LOAN AGREEMENT]

[PAGE 2 OF 2]

ATTACHMENT NO. 1-A

LEGAL DESCRIPTION

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

[to be inserted]

ATTACHMENT NO. 1-B

LEGAL DESCRIPTION

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

[to be inserted]

ATTACHMENT NO. 2

SCHEDULE OF PERFORMANCE

(To Be Attached)

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

(To Be Attached)

ATTACHMENT NO. 4

INSURANCE REQUIREMENTS

(To Be Attached)

ATTACHMENT NO. 5

PROJECT BUDGET

(To Be Attached)

ATTACHMENT NO. 6

CLOSING REQUIREMENTS

The following are the Closing Requirements:

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

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

ATTACHMENT NO. 7

CONVERSION REQUIREMENTS

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

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

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

ATTACHMENT J
CITY PROMISSORY NOTE

[attached]

PROMISSORY NOTE

Santa Clara, California

[\$_____]

_____, 2019

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

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

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

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

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

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

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

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

"City Note" shall mean this Promissory Note evidencing the City Loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Permitted Transfer**" shall have meaning given to it in the City Loan Agreement.

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

"**Property**" shall have meaning given to it in the City Loan Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Any failures or delays by City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies.

Delays by City in asserting any of its rights and remedies shall not deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

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

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

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

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

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

[Investor Limited Partner]

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

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

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

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

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

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

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

[Remainder of Page Intentionally Left Blank.]

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

BORROWER:

ATTACHMENT K
CITY DEED OF TRUST

[attached]

Recording Requested by and
When Recorded Mail to:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS MUTUALLY AGREED THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. The trust created hereby is irrevocable by Trustor.

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

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

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

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

And to:

[Investor Limited Partner]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signatures appear on next page.]

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

“TRUSTOR”

CALIFORNIA ACKNOWLEDGEMENT

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

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

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 _____ (Seal)

CALIFORNIA ACKNOWLEDGEMENT

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

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

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 _____ (Seal)

EXHIBIT 1

LEGAL DESCRIPTION

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

[To be inserted.]

ATTACHMENT L
CITY ASSIGNMENT OF RENTS AND LEASES

[attached]

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
Document entitled to free
recording per Government
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.]

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

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

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.]

ATTACHMENT M
CITY ASSIGNMENT OF AGREEMENTS

[attached]

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.]

ATTACHMENT N

PROVISIONS FOR DISBURSEMENT AGREEMENT

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

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

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

ATTACHMENT O
STATE REGULATORY AGREEMENT

[attached]

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 affordable housing, of which [(1) 82 units shall be age-restricted to seniors and leased to low-income households at or below 60% of area median income, (2) 81 units shall be age-restricted to seniors and leased to low-households at or below 80% area median income, and (3) 2 units shall be leased to moderate-income households or used as manager's units [TO BE UPDATED AS NECESSARY PRIOR TO THE CLOSING] (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**") ; and

WHEREAS, pursuant to the Loan Agreement (as defined in the Affordable Housing Agreement), the City is providing financial assistance to Developer to assist in the development of the Property; 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 (as defined therein).

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:

ATTACHMENT P
CITY REGULATORY AGREEMENT

[attached]

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] [TO BE UPDATED AS NECESSARY PRIOR TO THE CLOSING], provided that units to be leased to 120% AMI Households may be used as one or more resident apartment manager's units (the "Management Unit(s)" or "Manager's Unit(s)"). Each Unit other than the Management Units 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 other than the Management Units.

- D. All 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 maximum rents permitted by TCAC for the applicable Income Qualified Households.

"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 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), except for the Management Units.
- (e) Veterans shall be given a preference to lease 30% of the Units, except for the Management Units.

(2) Affordable Housing Unit Rents

- (a) Developer agrees it shall not charge to 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) **[Subject to discussion and revision.]** Rent increases, which may occur not more frequently than annually, shall not exceed the annual increase, if any, in AMI plus Five Percent (5%). 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 and shall not be in breach of this Agreement. 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 re-certification 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.
- (3) Upon the sale, conveyance or other transfer of the Property permitted under the Loan Agreement, and the assumption of the obligations hereunder by the transferee, Developer's liability for performance shall be terminated and Developer shall be

released from liability from any obligation to be performed hereunder after the date of such sale, conveyance, or transfer.

(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

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

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

Signature

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

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

Signature

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]

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

ATTACHMENT Q

GRANT DEED

[attached]

RECORDING REQUESTED BY:

AND WHEN RECORDED RETURN TO
AND MAIL TAX STATEMENTS TO:

Space above this line for Recorder's use

GRANT DEED

THE UNDERSIGNED GRANTOR DECLARES:

DOCUMENTARY TRANSFER TAX \$ _____; CITY TRANSFER TAX \$ _____;

___ computed on full value of the property conveyed, or

___ computed on full value less value of liens or encumbrances remaining at time of sale, or

___ transfer is exempt from tax for the following reason: _____
in the City of Santa Clara, California.

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

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

_____.

CITY OF SANTA CLARA,
a California municipal corporation

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

Brian Doyle, City Attorney

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

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 20__, before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

Exhibit A to Grant Deed

LEGAL DESCRIPTION OF PROPERTY

(To Be Attached)

ATTACHMENT R
CITY GUARANTY

[attached]

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 construction, development, equipping and/or operation of a 165-unit senior affordable housing project [and open, common and agricultural space and certain other improvements] [TO BE CONFIRMED BY THE PARTIES PRIOR TO CLOSING] to be located in the City of Santa Clara, known or to be known as [the 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 Promissory Note in the maximum principal amount of \$15,700,000 (the "**Note**"), 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 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 Loan Agreement.

2. **Scope of Guaranty.** Guarantor represents to Beneficiary Parties that Guarantor has a direct or indirect ownership interest 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 any other work to the Property 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 the Loan Agreement 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 in the reasonable judgment of Lender, insufficient to pay all costs 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 fifteen (15) days following demand therefor, and any amounts not paid within such time shall accrue interest at the default interest rate as provided in Section 6.1 of the Loan Agreement 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.**[Subject to discussion and revision.]**

4. **Guaranty of Payment and Performance.** Guarantor’s obligations under this Guaranty constitute an unconditional and continuing guaranty of payment and performance of the Guaranteed Obligations 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, (b) if Borrower is a partnership, proceed against any general partner of Borrower, (c) proceed against or exhaust any collateral held by Beneficiary Parties to secure the 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 Instrument. 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 performance of the Guaranteed Obligations may be modified or extended; (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 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, 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 for such consideration as Beneficiary Parties may deem proper; (c) release one or more of the persons constituting Guarantor from liability; and/or (d) otherwise deal with Guarantor, or any one or more of them, in any manner, and no such action shall impair the rights of Beneficiary Parties to require performance from Guarantor of any Guaranteed Obligation guaranteed by Guarantor under this Guaranty.

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 an Event of 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 an Event of 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 performed 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 have been indefeasibly 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 this Guaranty by Guarantor is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of 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 until the Guaranteed Obligations have been satisfied in full, 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.

(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, in such financial position, or in the business, operations, assets, management, ownership, condition (financial or otherwise) 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 make available 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 but only to the extent provided to any other lender to or limited partner of the Borrower: (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 have been indefeasibly satisfied in full, 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 earliest to occur of:

(a) The first day on which all of the following shall have occurred: (i) delivery from Lender to Borrower of the Release of Construction Covenants pursuant to the Loan Agreement; (ii) there are no unsatisfied demands for payment under this Guaranty; and (iii) delivery from Borrower to Lender of either (A) lien waivers from the Contractor and any subcontractors that previously filed a preliminary notice that they are performing work on the Project that may be subject to mechanic's liens, or (B) evidence reasonably acceptable to the City that the statutory lien period has expired and no liens were filed during the statutory period (or if one or more liens were filed during the statutory period, then evidence that such claims have been paid or bonded for); **[Subject to discussion and revision.]**

(b) the Conversion; or

(c) repayment of the Loan in full satisfaction and all other monetary obligations under the Loan Documents,

this Guaranty shall automatically terminate.

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 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 Guaranty or caused this Completion Guaranty to be duly executed and delivered by its authorized representative as of the date first set forth above.

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

ATTACHMENT S
CITY ENVIRONMENTAL INDEMNITY

[attached]

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.]