

AMENDMENT 1 TO PROMISSORY NOTE

(Riverwood Place)

THIS FIRST AMENDMENT TO PROMISSORY NOTE (the "Amendment") is dated as of _____, 2020, and is entered into by and among RIVERWOOD PLACE ASSOCIATES, L.P., a California limited partnership ("Borrower") and CITY OF SANTA CLARA ("City"), as the successor housing agency to the Redevelopment Agency of the City of Santa Clara ("Agency").

RECITALS

A. The Agency made a \$4,690,000 loan ("Loan") to Borrower evidenced by a Promissory Note dated March 14, 2001 (the "Note"). The Agency has been dissolved by operation of law and the City has succeeded to the housing assets of the Agency, including the Loan.

B. The Loan is evidenced by an Agreement Containing Covenants Including Affordable Housing Requirements (Riverwood Place) dated March 14, 2001 (the "Covenant") encumbering the real property and improvements described therein and in Exhibit "A" attached hereto (the "Property") which was recorded in the Official Records of Santa Clara County, California on March 14, 2001 as Document No. 15591628.

C. Borrower desires to obtain an unsecured loan for solar improvements at the Property (the "Solar Loan"), and in connection therewith, Borrower has requested that City modify certain terms of the Loan as more particularly set forth herein.

D. City is willing to make such modifications, subject to the terms of this Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual terms and covenants set forth herein, and other consideration, the sufficiency of which is acknowledged, Borrower and City hereby agree as follows:

1. Extension of Maturity Date. The maturity date of the Note is hereby extended from March 14, 2036 to March 14, 2049.

2. Interest Rate on Loan. The interest rate applicable to the Loan is hereby amended from zero to two percent (2%) simple interest per annum, calculated on a 365-day basis, from and after the effective date of this Amendment.

3. Partnership Management Fee. Notwithstanding anything in the Note or Covenant, or any other document evidencing or securing the Loan, Borrower shall be permitted to pay a cumulative Partnership Management Fee ("PMF") to the general partner, earned in the amount of \$25,000, commencing in the year 2020, which fee may increase by 3% per annum on January 1, 2021 and on each January 1 thereafter. The PMF shall be a permitted Operating Expense of the Project. Any unpaid accrued PMF prior to the year 2020 shall be paid from Borrower's share of the Residual Receipts as defined below.

4. City's Share of Residual Cash Flow. Section 2.b. of the Note is hereby deleted and replaced with the following: "Payments of interest and principal shall be made to City from "Residual Receipts". To the extent there are Residual Receipts from the Project, Borrower shall pay fifty percent (50%) of the Residual Receipts to City on an annual basis, no later than April 30 of each year, commencing April 30, 2020. On or before each April 30th, Borrower shall submit to City an Annual Financial Statement for the preceding fiscal year, determining the amount of Residual Receipts generated in that year. The City shall review and approve such Statement, or request revisions, within 30 days after receipt. In the event as the result of the City's review of the Statement, there is an increase in the amount of Residual Receipts due to the City, Borrower shall promptly pay to the City the difference, with interest, from the payment date, at the rate of one percent (1%) over the Prime Rate announced by Bank of America, but in any event within ten (10) days of notice of such increase. In the event the City determines that there is any overpayment, the City shall promptly refund the amount of the overpayment to the Borrower, but in any event, within ten (10) days of such determination. The remaining 50% of Residual Receipts shall be paid to Borrower and may be used to repay the Solar Loan. Payments shall be credited first to any accrued but unpaid interest, then to current interest due and owing and lastly to principal."

5. Operating Expenses. The definition of Operating Expenses in the Note is hereby deleted and replaced with the following:

"Operating Expenses" means costs reasonably and actually incurred for operations and maintenance of the Project, to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally acceptable accounting principles. The Operating Expenses shall be subject to the reasonable approval of the City.

Operating Expenses include the following:

- (i) property and other taxes and assessments imposed on the Project;
- (ii) premiums for property damage and liability insurance;
- (iii) utility services not paid for directly by the tenants, including but not limited to water, sewer, trash collection, gas and electricity;
- (iv) maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting, and decorating, cleaning, common systems repairs, general repairs, janitorial supplies, and others;
- (v) any license or certificates of occupancy fees required for operation of the Project;
- (vi) general administrative expenses including but not limited to advertising, marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and other;
- (vii) property management fees and reimbursements including on-site manager expenses, not to exceed 6.5% of gross rental receipts;
- (viii) any advances or loans made by the owner or affiliate thereof to fund operating shortfalls, provided that any loans by owner or any affiliate shall be approved in advance by the City;
- (ix) annual deposits into a reserve for capital replacements of Project improvements in an amount of \$300 per unit or such other amount as approved by a senior lender or as allocated in an approved annual property budget;

- (x) any deposits to an Operating Reserve as required by a senior lender, or approved by the City;
- (xi) current and accrued annual resident services increasing by no more than 3.5 percent per year, or such greater amount as approved by the City;
- (xii) current and accrued Partnership Management Fee;
- (xiii) the Monitoring Fee payable to the City (defined in the Covenant).”

6. Late Payment Charge. Borrower shall pay a late payment fee equal to 5% of any payment not paid within 30 days after such payment is due.

7. Miscellaneous.

(i) Amendments - Writing Required. No amendment or modification of this Amendment shall be effective unless in writing and executed by City and the Borrower.

(ii) Severability. In the event that any provision of this Amendment or the application thereof to any person or circumstances shall be declared null and void, invalid, or held for any reason to be unenforceable by a Court of competent jurisdiction, the remainder of such agreement shall nevertheless remain in full force and effect, and to this end, all covenants, conditions and agreements described herein are deemed separate.

(iii) Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(iv) Governing Law. This Amendment shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have each caused this Amendment to be duly executed as of the date first written above.

BORROWER:

RIVERWOOD PLACE ASSOCIATES, L.P.,
a California limited partnership

By: MP Santa Clara, Inc.,
a California nonprofit public benefit corporation,
General Partner

By: _____
Print Name: _____
Title: _____

CITY:

CITY OF SANTA CLARA
a California municipal corporation

By: _____
Print Name: _____
Title: _____