

RESOLUTION NO. 20-8811

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA APPROVING AN AFFORDABLE HOUSING AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND ZAEN PARTNERS, LLC, FOR THE PROJECT LOCATED AT 2310 CALLE DEL MUNDO, SANTA CLARA

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

WHEREAS; ZAEN Partners, LLC (“Developer”), is the project sponsor for three infill, mixed-use projects that would cumulatively include approximately 969 rental apartment units, parking garages, up to 30,000 square feet of retail space, approximately 4,500 square feet of leasing space, and approximately 55,000 square feet of amenity space (collectively, the “ZAEN Tasman East Projects”);

WHEREAS; On July 17, 2019, the City approved the first project, known as the “Station Project,” which includes 503 residential rental units and approximately 23,870 square feet of retail space located at 5123 Calle Del Sol (Parcels 19/29). The second project proposed by Developer would include 150 residential rental units with approximately 5,000 square feet of retail located at 2302 Calle Del Mundo (the “Parcel 24 Project”); the Parcel 24 Project is currently pending review by City staff and anticipated to be brought forward for architectural control approval in the near future. The third project proposed by Developer would include 316 residential rental units located at 2263 Calle Del Mundo (the “Parcel 60/61 Project”) and is also currently under review by City staff;

WHEREAS; Developer intends to develop a mixed-income, affordable housing project on Parcel 24 that includes approximately one hundred fifty (150) rental units with the required unit mix of studio, one bedroom and two bedroom units, and consisting of one hundred forty nine (149) affordable units (30 of which are intended to satisfy the affordable housing obligations for the Station Project and the Parcel 60/61 Project and Parcel 24), one manager’s unit (1) and related facilities;

WHEREAS; thirty of the one-hundred and forty-nine (149) very low-income units on the Parcel 24 Site are intended to satisfy the Affordable Housing Requirements for all 969 units associated with the ZAEN Tasman East Projects. In order to ensure that the affordable units are provided

concurrently with the market rate units, the City will not issue a Temporary Certificate of Occupancy for the Station Project or the Parcel 60/61 Project until such time as a building permit is issued for the Parcel 24 Project, unless otherwise approved by the Community Developer Director, or unless Developer elects to default to the original conditions of approval for the Station Project (i.e., construct inclusionary units as part of the Station Project at the standard levels of affordability);

WHEREAS, the Loan 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 Loan Agreement, Deed of Trust, Promissory Note, Affordable Housing Agreement and Regulatory Agreement (together, the "Project Documents"); and,

WHEREAS, the development of units as contemplated by the Project Documents will help address the City's housing needs at very low-income levels by providing the City with one-hundred and forty-nine (149) affordable units. The distribution of these units shall be thirty two (32) units rented to households with income levels at or below 50% Area Median Income ("AMI"), eighty seven (87) units rented to households with income levels at or below 60% AMI, fifteen (15) units rented to households with income levels at or below 80% AMI, fifteen (15) units rented to households with income levels at or below 100% AMI and one (1) unrestricted manager's unit.

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.
2. That the City Council hereby approves and authorizes the City Manager to execute the Loan Agreement, substantially in the form attached hereto as Exhibit "Loan 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.

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3. That this Resolution, including the Loan Agreement approval described in Section 2 above, is based on the findings set forth above.

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 Loan Agreement pursuant to the terms of the negotiated Term-sheet. The City Manager is further authorized and directed to perform all other acts, negotiate, amend and execute all documents (including deeds of trust, promissory notes, and affordable housing agreement) necessary or convenient to close escrow and carry out the purposes of this Resolution and the Loan 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 25TH DAY OF FEBRUARY, 2020, BY THE FOLLOWING VOTE:

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



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Affordable Housing Agreement

24463516

Regina Alcomendras
Santa Clara County - Clerk-Recorder

04/24/2020 10:41 AM

RECORD WITHOUT FEE
PURSUANT TO GOVERNMENT CODE § 6103

**RECORDING REQUESTED BY
AND
WHEN RECORDED MAIL TO:**

City of Santa Clara
City Clerk's Office
1500 Warburton Avenue
Santa Clara, California 95050

Titles: 1 Pages: 39

Fees: \$0.00
Taxes: \$0
Total: \$0.00



SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

AFFORDABLE HOUSING AGREEMENT

by and between

THE CITY OF SANTA CLARA

and

ZAEN Partners, LLC

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ATTACHMENT NO. 1 LEGAL DESCRIPTION - SITE

ATTACHMENT NO. 2 SCOPE OF DEVELOPMENT

ATTACHMENT NO. 3 AGREEMENT CONTAINING COVENANTS AND
RESTRICTIONS

AFFORDABLE HOUSING AGREEMENT

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

ARTICLE 1 SUBJECT OF AGREEMENT

Section 1.1 Purpose of the Agreement

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

b. Developer has recently obtained Architectural Review approval of an apartment community containing 503 residential units and approximately 23,780 square feet of commercial space to be constructed (in two phases) on the real property at 5123 Calle de Luna in the City of Santa Clara (Parcels 19 and 29). In addition, Developer is seeking approval of a Project at 2302 Calle de Mundo (Parcel 24) (hereinafter "Project") that would include 150 residential units. In addition, Developer anticipates obtaining eventual approval of additional residential units at 2263 Calle Del Mundo (Parcel 60 and 61) which is anticipated to include approximately 316 residential units. All of these approved and contemplated developments (Parcels 19/29, Parcel 24, and Parcels 60/61) would be subject to affordable unit requirements. In coordination with the City, Developer has agreed that in lieu of providing affordable units within each individual project, Developer will deliver all of the affordable unit requirements for Parcels 19, 29, 24, 60 and 61 at once, by providing one hundred forty nine (149) affordable housing units within the Parcel 24 Project, a .76 acre site owned by Developer ("Site") at the very low, low and moderate income level, for a period of 55 years. The distribution of the units in the Parcel 24 Project shall be thirty two (32) units rented to households with income levels at or below 50% AMI, eighty seven (87) units rented to households with income levels at or below 60% AMI, fifteen (15) units rented to households with income levels at or below 80% AMI, fifteen (15) units rented to households with income levels at or below 100% AMI and one (1) unrestricted manager's unit. The thirty (30) very low income units on the Site will satisfy the Affordable Housing Requirements for the project on Parcel 19 and 29, the Affordable Housing Requirements with respect to Parcel 24, and may also be used to satisfy the Affordable Housing Requirements in regard to the future development in Parcel 60 and 61, which shall be formalized if that future project is approved.

DRAFT FOR DISCUSSION PURPOSES

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

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

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

Section 1.2 The City

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

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

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

Section 1.3 The Developer

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

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

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

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

Section 1.4 Assignment of this Agreement

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

the obligations of Developer under this Agreement which relate to the period from and after the date of the assignment, including, without limitation, the obligations in Section 2.1 and Section 3.1 hereof.

ARTICLE 2 DEVELOPMENT OF THE SITE

Section 2.1 Scope of Development; Schedule of Performance

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

Section 2.2 Permits

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

Section 2.3 Zoning and Land Use Requirements

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

Section 2.4 Construction Financing

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

Section 2.5 Relationship of City and Developer

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

ARTICLE 3

USE OF THE SITE

Section 3.1 Uses

a. In accordance with Developer's business plan for the Site, the Developer covenants and agrees for itself, its successors, its assignees and every successor in interest to the Site or any part thereof, that Developer, its successors and assignees shall develop the Project on the Site (including, without limitation, one hundred forty nine (149) Affordable Housing Units) and use the Site for the development and occupancy of residential dwelling units, as provided in the Approved Plans.

b. In addition, the Developer agrees to restrict the occupancy of the one hundred forty nine (149) affordable Units on the Site as rental units at an Affordable Housing Cost, as defined in Attachment No. 3, titled Agreement Containing Covenants and Restrictions, attached hereto, it being agreed that this Agreement shall terminate upon issuance of permanent certificate(s) of occupancy for the Project, and the Agreement Containing Covenants and Restrictions shall thereafter constitute the sole affordable housing obligations owed by Developer in favor of the City with respect to the Project. During the term of rental use, the Agreement Containing Covenants and Restrictions shall be recorded against the Project, substantially in the form attached hereto as Attachment No. 3. The Agreement Containing Covenants and Restrictions shall be binding on the Developer and any successor in interest to the Affordable Housing Units or any part thereof for the benefit and in favor of the City. The obligations set forth in the Agreement Containing Covenants and Restrictions shall remain in effect for the respective time period set forth in the Agreement Containing Covenants and Restrictions.

Section 3.2 Maintenance of the Site

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

ARTICLE 4

DEFAULTS, REMEDIES AND TERMINATION

Section 4.1 Defaults - General

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

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

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

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

Section 4.2 Institution of Legal Actions

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

Section 4.3 Applicable Law

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

Section 4.4 Acceptance of Service of Process

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

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

Section 4.5 Rights and Remedies Are Cumulative

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

Section 4.6 Damages

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

Section 4.7 Specific Performance

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

Section 4.8 Termination by Either Party; Term of this Agreement

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

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

ARTICLE 5 GENERAL PROVISIONS

Section 5.1 Notices, Demands and Communications between the Parties

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

Section 5.2 Conflicts of Interest

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

will advise City if a conflict arises.

Section 5.3 Nonliability of City Officials and Employees

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

Section 5.4 Force Majeure: Extension of Time of Performance

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

Section 5.5 Approvals

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

Section 5.6 Compliance with Laws

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

Section 5.7 Hold Harmless/Indemnification

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

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

ARTICLE 6 ENTIRE AGREEMENT, WAIVERS, AMENDMENTS, AND CEQA

Section 6.1 Counterparts

This Agreement may be executed in duplicate originals each of which is deemed to be an original. This Agreement includes twelve (12) pages and three (3) attachments, including all exhibits appended to such attachments, which constitute the entire understanding and agreement of the Parties.

Section 6.2 Integration

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

Section 6.3 Waivers

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

Section 6.4 Mortgagee Protection

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

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

Section 6.5 Execution and Effective Date

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

Section 6.6 California Environmental Quality Act Compliance

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


[signatures appear on following page]

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

APPROVED AS TO FORM:



BRIAN DOYLE
City Attorney



DEANNA J. SANTANA
City Manager

"CITY"

**ZAEN Partners, LLC
a California Limited Liability Company**

By: Ensemble Investments, LLC, an Arizona limited liability company, its
manager


By: _____
Kambiz Babaoff

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

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.

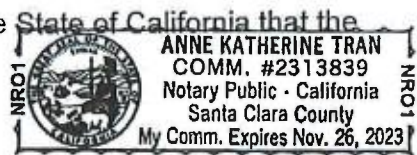
State of California
County of Santa Clara

On March 24, 2020 before me Anne Katherine Tran
personally appeared Mannel Pineda

_____, 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
foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)

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

State of California)
County of Los Angeles)

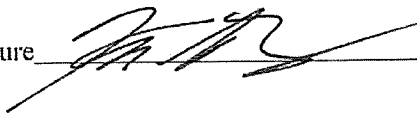
On March 17, 2020, before me, Henry Babynton Cruz,
(insert name and title of the officer)

Notary Public, personally appeared Kambiz Bagdoff,
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)

**ATTACHMENT NO. 1
AFFORDABLE HOUSING AGREEMENT**

LEGAL DESCRIPTION - SITE

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

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

**ATTACHMENT NO. 2
AFFORDABLE HOUSING AGREEMENT**

**SCOPE OF DEVELOPMENT
Parcel 24**

The project site is 0.99 acres located at 2302 Calle Del Mundo (APN# 097-46-024) in Santa Clara within the Center District of the adopted Tasman East Specific Plan. The proposed project consists of 150 mixed-income apartment units with approximately 86,520 rentable square feet and approximately 5,000 square feet of general retail.

The proposed project consists of a mix of studios, 1-bedroom, 2-bedroom, and 3-bedroom units ranging in size from 420 square feet to 1,207 square feet. The affordability levels would be restricted such that 90% of the units would be affordable to households between 50% ("Very Low Income") and 80% AMI ("Low Income") with the remaining 10% at 100% AMI ("Moderate Income") and one onsite manager's unit.^t The site is conveniently located two blocks north of the Tasman VTA light rail stop, and within close proximity to other public transit options.

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

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

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

**ATTACHMENT NO. 3
AFFORDABLE HOUSING AGREEMENT**

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

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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
(Including Affordable Housing Restrictions for Rental Units)**

THIS AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS, Including Affordable Housing Restrictions ("Agreement") is made by and between ZAEN Partners, LLC, a California Limited Liability Company ("Developer"), and THE CITY OF SANTA CLARA ("City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement". The City and the Developer agree as follows with reference to the following facts:

RECITALS

- A. Developer intends to develop 969 residential units on the properties known as Parcels 19/29, Parcel 24, and Parcels 60/61, (collectively, the "Tasman East Properties") all within the Tasman East Plan Area.
- B. Developer is the legal owner of the real property at 2302 Calle Del Mundo, (Parcel 24) as further described in Exhibit A attached hereto. In order to satisfy all the Affordable Housing Requirements for the 969 units being developed the Tasman East Properties, Developer agreed to provide one hundred forty nine (149) affordable rental housing units to be developed on Parcel 24, a .76 acre site owned by Developer and approved for one hundred fifty (150) rental apartment units. The one hundred forty-nine (149) affordable rental housing units shall be provided in the Parcel 24 according to the terms herein stated. The distribution of these units shall be thirty two (32) units rented to households with income levels at or below 50% AMI, eighty seven (87) units rented to households with income levels at or below 60% AMI, fifteen (15) units rented to households with income levels at or below 80% AMI, fifteen (15) units rented to households with income levels at or below 100% AMI and one (1) unrestricted manager's unit.

- C. All one hundred forty nine (149) proposed affordable rental housing units shall be made available at Below Market Rate (BMR) rents that do not exceed an Affordable Housing Cost.
- D. It is the intention of the City and Developer to set forth and apply these covenants, conditions and restrictions to satisfy the conditions of approval for the Project as well as to satisfy the affordable housing obligations of Developer (or its successors and assigns) in connection with the projects located at Parcels 19/29 and Parcels 60/61.

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 very low-income households (as defined in Section 1(b) below) at rent below market rate, 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:

"Affordable Housing Cost" shall mean a monthly rent paid by the household legally occupying a Unit, plus a reasonable utility allowance, that does not exceed the following:

- (a) For a Very Low-Income Household, the product of thirty percent (30%) times fifty percent (50%) of the Area Median Income adjusted for family size appropriate for the Unit divided by twelve (12).
- (b) For a Low-Income Household, the product of thirty percent (30%) times sixty percent (60%) of the Area Median Income adjusted for family size appropriate for the Unit divided by twelve (12).
- (c) For a Low-Income Household, the product of thirty percent (30%) times eighty percent (80%) of the Area Median Income adjusted for family size appropriate for the Unit divided by twelve (12).
- (d) For a Median-Income Household, the product of thirty percent (30%) times one hundred percent (100%) of the Area Median Income adjusted for family size appropriate for the Unit divided by twelve (12).

"Affordability Period" shall mean the length of time that this recorded agreement and tenant incomes and rents for the Affordable Housing Units are limited, as described below. This period shall be for fifty-five (55) years from the date the Certificate of Occupancy is issued for the property.

"Affordable Housing Unit" or sometimes "Unit" shall mean one of the one hundred forty nine (149) Below Market Rate rental units, of which all one hundred forty nine

(149) units shall be designated to be occupied or made available for occupancy exclusively to an Income-Qualified Household, as defined in this Agreement.

"Annual Income" shall mean the annual income limits established by the California Department of Housing and Community Development; provided, if the Project is financed in whole or in part through the use of low-income housing tax credit program under Section 42 of the Internal Revenue Code ("Tax Credits"), as administered pursuant to the regulations of the California Tax Credit Allocation Committee ("CTCAC") and/or the proceeds of tax-exempt bonds or other obligations the interest on which are exempt from tax under the Internal Revenue Code and which are issued under the volume limitations pursuant to Section 146 of the Internal Revenue Code ("Tax-Exempt Bonds"), then "Annual Income" means the annual income limits established by CTCAC.

"Below Market Rate" or "BMR" shall mean the provision of a dwelling unit at rent levels less than market rates.

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

"Area Median Income" shall mean the annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision; provided, if the Project is financed in whole or in part through the use of Tax Credits, as administered pursuant to the regulations of CTCAC and/or the proceeds of Tax-Exempt Bonds, then "Area Median Income" means the annual median income for Santa Clara County, adjusted for household size, as published periodically by CTCAC.

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

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

"Income-Qualified Household" shall mean a household with an income that does not exceed the following (except as provided in Section 2(b)(4) below):

- (a) For a Very Low-Income BMR Unit, fifty percent (50%) of the Area Median Income adjusted for family size.
- (b) For a Low-Income BMR Unit, sixty percent (60%) of the Area Median Income adjusted for family size.
- (c) For a Low-Income BMR Unit, eighty percent (80%) of the Area Median Income adjusted for family size.
- (d) For a Median-Income BMR Unit, one hundred percent (100%) of the Area Median Income adjusted for family size.

"Project" shall mean the one hundred fifty (150) unit residential apartment facility located upon the real property described in the Legal Description attached hereto as Exhibit A, inclusive of one hundred forty nine (149) units rented at a Below Market

Rate Monthly Rent, as defined below, together with structures, improvements, equipment, fixtures, and other personal property owned by the Developer and located on or used in connection with all such improvements and all functionally related and subordinate facilities.

"Below Market Rate Monthly Rent" or "Monthly Rent" shall mean, for purposes of this Agreement, an amount that is no greater than the following (except as provided in Section 2(b)(4) below):

- (a) For a Very Low-Income Household, thirty percent (30%) of fifty percent (50%) of the Area Median Income divided by twelve (12), and adjusted for household size appropriate for the Unit, less the Utility Allowance.
- (b) For a Low-Income Household, thirty percent (30%) of sixty percent (60%) of the Area Median Income divided by twelve (12), and adjusted for household size appropriate for the Unit, less the Utility Allowance.
- (c) For a Low-Income Household, thirty percent (30%) of eighty percent (80%) of the Area Median Income divided by twelve (12), and adjusted for household size appropriate for the Unit, less the Utility Allowance.
- (d) For a Median-Income Household, thirty percent (30%) of one hundred percent (100%) of the Area Median Income divided by twelve (12), and adjusted for household size appropriate for the Unit, less the Utility Allowance.

"Utility Allowance" shall be based upon schedules issued from time to time by the Santa Clara County Housing Authority, unless a federal standard applicable to the development (such as the Tax Credit program administered pursuant to the regulations of CTCAC) provides for the use of a different utility allowance, in which case the federal utility allowance standard shall apply. 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 one hundred fifty (150) residential dwelling units, one hundred forty nine (149) of which shall be Affordable Housing Units for Very Low Income, Low Income and Median Income-Qualified Households.
- 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, for a term of fifty-five (55) years, that one hundred forty nine (149) Affordable Housing Units shall be rented or leased to or held available for rental or occupancy by Very Low Income-Qualified Households.

(1) Units Generally.

All the rental Units at Project that 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.

(2) Affordable Housing Unit Rents

- (a) Developer agrees it shall not charge or collect from any tenant of an Affordable Housing Unit a monthly amount in exchange for occupancy of the Affordable Housing Unit that exceeds the Affordable Housing Cost 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 the applicable Affordable Housing Cost.
- (b) For so long as the Project are encumbered by a Tax Credit and/or Tax-Exempt Bond low-income regulatory agreement, Affordable Housing Cost for the Affordable Housing Units and all rent increases thereafter shall be charged strictly in accordance with the rent schedules published by CTCAC, and the Developer shall provide the City with notice annually of the then-applicable Affordable Housing Cost levels. At any time this Agreement is the sole encumbrance recorded against title to the Improvements setting forth rent and income restrictions for the Affordable Housing Units, the Affordable Housing Cost for the Affordable Housing Units shall be based upon schedules issued from time to time by HUD and modified and published by HCD. At any time this Agreement is the sole encumbrance recorded against title to the Project setting forth rent and income restrictions for the Affordable Housing Units, upon request, City shall notify the Developer of the applicable area rents based on number of bedrooms.
- (c) At any time this Agreement is the sole encumbrance recorded against title to the Project setting forth rent and income restrictions for the Affordable Housing Units rent increases, which may occur not more frequently than annually, shall not exceed the annual increase, if any, in Area Median Income, and Affordable Housing Cost for the Affordable Housing Units exceed the amount derived by the Affordable Housing 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) For so long as the Project is encumbered by a Tax Credit and/or Tax-Exempt Bond low-income regulatory agreement, determination of income of each Affordable Housing Unit tenant shall be determined and certified strictly in accordance with the requirements of CTCAC. At any time this Agreement is the sole encumbrance recorded against title to the Improvements setting forth rent and income restrictions for the Affordable Housing Units, the income of each Affordable Housing Unit tenant must be determined and certified prior to occupancy of that unit, using the definition of Annual Income established by the California Department of Housing and Community Development, and 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) For so long as the Project is encumbered by a Tax Credit and/or Tax-Exempt Bond low-income regulatory agreement, income of each Affordable Housing Unit tenant shall be determined and certified strictly in accordance with the requirements of CTCAC. At any time this Agreement is the sole encumbrance recorded against title to the Improvements setting forth rent and income restrictions for the Affordable Housing Units, annually, Developer shall determine the income of all tenants residing in an Affordable Housing Unit and 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 households 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) For so long as the Project is encumbered by a Tax Credit and/or Tax-Exempt Bond low-income regulatory agreement, income limits for

Affordable Housing Unit tenant shall be determined and certified strictly in accordance with the requirements of CTCAC. At any time this Agreement is the sole encumbrance recorded against title to the Improvements setting forth rent and income restrictions for the Affordable Housing Units, income limits, adjusted for household size, will be based off of the Area Median Income for Santa Clara County, which is published periodically by HCD and, upon request, City shall notify the Developer of the applicable area median income limits.

(4) Over-Income Tenants in Affordable Housing Units

- (a) For so long as the Project is encumbered by a Tax Credit and/or Tax-Exempt Bond low-income regulatory agreement, determination of over-income tenants and rent charged to such over-income tenants shall be determined and certified strictly in accordance with the requirements of CTCAC, and no resident that occupies a unit subject to a regulatory agreement with respect to the Tax Credits, shall be evicted as a result of such resident being over income except as and when allowed by Federal law, including 26 U.S.C. §42. At any time this Agreement is the sole encumbrance recorded against title to the Improvements setting forth rent and income restrictions for the Affordable Housing Units, subsections (b) and (c) below shall apply.
- (b) Any Affordable Housing Unit tenant whose income no longer qualifies for the Affordable Housing Unit at their current Monthly Rent may continue to reside in the Unit. However, subject to Section 4(b), they must pay rent at the lesser of:
 - i. Thirty percent (30%) of the household annual income, divided by twelve (12), less the Utility Allowance; or
 - ii. The current market rent being charged in a comparable unit not subject to this Agreement.
- (c) Affordable Housing Units occupied by tenants whose income no longer qualifies as an Income-Qualified Household are considered in temporary "non-compliance" with this Agreement. To bring the Affordable Housing Unit back into compliance, the Developer must:
 - (i) Rent the next vacant Unit of the same size (i.e.: 2-bedroom) to an Income Qualified Household for a BMR Unit whose Annual Income would qualify them for the "non-compliant" Affordable Housing Unit at the original level of affordability (i.e., Very Low-Income, Low-Income, Median-Income or Moderate-Income) as the "non-compliant" Affordable Housing Unit (however, using the then current Area Median Income as adjusted for family size). Such Unit replaces the "non-compliant" Affordable Housing Unit; and
 - (ii) Re-designate the original Affordable Housing Unit that was in non-compliance as a market rate unit in Project. The tenants may be charged rents comparable to existing market rate units in the Project.

- c) Subject to the provisions of Section 1(b) above, Developer shall maintain a distribution of the affordable housing units in Exhibit 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.

(6) Lease Provisions

- (a) Tenants in the Affordable Housing Units shall be subject to the same lease document and requirements of tenants in the market rate units, with the exception of those additional stipulations described below. 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 shall 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, or any other characteristic protected by law 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) No later than ninety (90) days prior to the start of accepting applicants, Developer or an Affiliate approved by City of Santa Clara shall prepare and submit to the City for reasonable approval a marketing and outreach program for the Affordable Housing Units ("Marketing") 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 one hundred forty nine (149) Affordable Housing 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. Marketing of the Affordable Housing Units shall be done through outreach that affirmatively furthers fair housing in accordance with all federal and State fair housing laws.
- (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 to 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 one 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.
 - (6) Rent Subsidy, if any (e.g., Section 8 or other third party voucher).

- (7) Explanation of any change in the designated affordable units, and reason for change that occurred in the previous fiscal year (July 1 to June 30).
- (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) Developer shall pay City on an annual basis, on or before July 1st of each year following the issuance date of the Certificate of Occupancy for the building, a multi-family monitoring fee per Affordable Housing Unit (the "Monitoring Fee"). The Monitoring Fee is published in the City's Municipal Fee Schedule and updated from time to time.

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 reimburse such tenants within ten (10) business days of City's written demand, provided if such tenants cannot be located then the Developer shall pay to the City the full amount of such excess to the City. 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.

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 non-compliant 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, if such failure or delay is not cured within thirty (30) days after written notice by City to Developer, or if such failure or delay cannot be reasonably cured within the thirty (30) day period and Developer has not commenced curing the same, then such failure or delay 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, and their respective successors and assigns, 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.

(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:

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

[INSERT NOTICE FOR ZAEN PARTNERS]
ZAEN Partners, LLC
c/o Ensemble Investments
444 West Ocean Boulevard, Suite 650
Long Beach, CA 90802

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.

[signatures appear on following page]

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, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager

Date: _____

"CITY"

**ZAEN Partners, LLC
a California Limited Liability Company**

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

By: _____
Steve Edwards

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

By: _____
Tyson Sayles

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

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)
County of)

On _____ before me, _____,
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)

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)
County of)

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