

**AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
(Freebird - 2330 Monroe Street, Santa Clara, CA 95050)**

between the

THE CITY OF SANTA CLARA

and

FREEBIRD DEVELOPMENT COMPANY, LLC

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AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (Freebird - 2330 Monroe Street, Santa Clara, CA 95050), dated for identification purposes only as of _____, 2020, is entered into by and between the **CITY OF SANTA CLARA**, a California municipal corporation (the “**City**”), and **FREEBIRD DEVELOPMENT COMPANY, LLC**, a California limited liability company (“**Developer**”), with reference to the following:

R E C I T A L S

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. The City owns that certain vacant lot of approximately 2.5 acres located at 2330 Monroe Street, Santa Clara, California (the “**City Property**”) as described and depicted in Attachment A. The City issued a Request for Proposals for 2330 Monroe Street / San Tomas And Monroe dated March 30, 2018 with respect to the development of the City Property (“**RFP**”). Developer’s proposal in response to the RFP was selected.

D. Developer desires to acquire a leasehold interest in the City Property. The leasehold interest in the City Property shall be conveyed to Developer from the City, together with a fee interest in 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**”).

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

F. Developer intends to develop upon the Property 65 units of housing. As of the date of this Agreement, the Parties anticipate that units will be leased as follows: (a) 16 units to be leased to 30% AMI Households who qualify as persons with developmental disabilities; (b) 10 units to be leased to 50% AMI Households; (c) 13 units to be leased to 60% AMI Households; (d) 16 units to be leased to 80% AMI Households; (e) 9 units to be leased to 120% AMI Households; and (f) 1 unit as a manager’s unit (the “**Management Unit**”). The foregoing units to be developed on the Property, excluding the Management Unit, are referred to herein as the “**Affordable Units**”. Developer also intends to include a community room, property management and social services offices, an exercise room, a library/game room, onsite laundry, an All Abilities play area, and an outdoor fitness path. Developer’s leasehold interest in the City

Property, and fee interest in the Improvements located thereon, together with the development thereof in accordance with this Agreement, are referred to herein as the “**Project**”).

G. Developer requires assistance from City in order to develop and construct the Project. City has agreed to assist Developer with (1) a seller takeback loan in the amount of \$5,200,000 (the “**Seller Loan**”) to finance the capitalized rent under the Ground Lease (as defined below), and (2) a loan of up to \$6,500,000 (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 Project is estimated to be approximately \$38,000,000.

H. Developer intends to form a limited partnership (the “**Tax Credit Partnership**”) to own and finance the Project and who will be the successor in interest under this Agreement as to Developer’s rights and obligations regarding the Project. The Tax Credit Partnership would secure other construction and permanent financing sources to cover the total cost of developing the Project. The anticipated funding sources for the Project include the sources shown in the Financing Summary attached as Attachment E to this Agreement.

I. Developer and City agree that the Seller Loan and 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.

J. The City and Developer are parties to that certain Disposition and Development Agreement dated for identification purposes only as of January 28, 2020 (the “**Original Agreement**”) with respect to the Property. The City and Developer now desire to amend and restate the Original Agreement pursuant to the terms and conditions of this Agreement.

K. The development of the 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.

“**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.

“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 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 F.

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

“AMI” means the median family income figures and standards (adjusted for actual Household size) (I) utilized by TCAC as to 30% AMI Households, 50% AMI Households, 60% 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.

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

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

“City Advance” is defined in Section 3.13.

“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-1, 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-1, 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 Indemnitees” means City and its departments, divisions, agencies, elected officials, boards, officers, employees, representatives and agents.

“City Lender Policies” is defined in Section 3.5.2

“City Loan” is defined in Recital G.

“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 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-1, 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.

“Construction Budget” means the schedule of construction expenses actually and expected to be incurred by Developer in connection with the 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 Project selected by Developer in its sole and absolute discretion.

“Construction Loan” means the loan for construction of the 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 Grant Deed, if requested by Developer, 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 \$3,200,000.

“Developer” means Freebird Development Company, 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 Project, as set forth in the Construction Budget.

“Disbursement Agreement” means a disbursement agreement, if requested by the Construction Lender, among the City, the Construction Lender, and 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.

“Economic Event” is defined in Section 8.7.

“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 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 Project or any of the proposed development on the Project.

“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 Old Republic 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.

“Event(s) of Force Majeure” is defined in Section 8.7.

“Evidence of Financing” is defined in Section 5.1.

“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 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 Project.

“Grant Deed” shall mean the Grant Deed substantially in the form attached to this Agreement as Attachment Q, pursuant to which the City will convey a fee interest in the Improvements to Developer.

“Ground Lease” means the Ground Lease between the City, as landlord, and Developer, as tenant, providing Developer with a leasehold interest in the City Property 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 City Property 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.

“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 biphenyls, (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 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 located on the City Property.

“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” is defined in Recital F.

“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.

“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 in accordance with the Project Pro Forma following Conversion, secured by a deed of trust against the Project.

“Permitted Transfer” is defined in Section 2.3.2.

“Project” is defined in Recital F.

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

“Property” is defined in Recital D.

“Qualified Tenant(s)” means a Household who qualifies as a 30%, 50%, 60%, 80%, and/or 120% AMI Household, as applicable.

“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. The Schedule of Performance may be subject to revision from time to time as mutually agreed on in writing between Developer and the City.

“Seller Assignment of Rents and Leases” shall mean the Assignment of Rents and Leases substantially in the form attached to this Agreement as Attachment L-2, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“Seller Deed of Trust” means the Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) securing the Seller Loan, in substantially the form attached to this Agreement as Attachment K-2, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“Seller Loan” is defined in Recital G.

“Seller Loan Documents” means the Seller Promissory Note, the Seller Deed of Trust, the Seller Assignment of Rents and Leases and any amendments and modifications thereto.

“Seller Promissory Note” means the Promissory Note evidencing the Seller Loan in substantially the form attached to this Agreement as Attachment J-2, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“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 [aggregate amount of the Seller Loan plus 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 Project, which shall include, at a minimum, services for households with intellectual and/or developmental disabilities.

“**State**” means the State of California.

“**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 and Seller Loan and Seller 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; provided, however, that the City Regulatory Agreement shall not be subordinated.

“**Tax Credit Partnership**” is defined in Recital G.

“**Tax Credit Regulatory Agreement**” means the regulatory agreement that will be recorded against the 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 Old Republic Title Company.

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

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 and the Seller 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.

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 portion of the City Advance actually retained by City.

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 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 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 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 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 and the Seller 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 (or a notice that there has been no such change) within two (2) weeks of each March 31, June 30, September 30 and December 31 after the date hereof, and in any event at the Project Pro Forma to be included in the application for Tax Credits and/or tax-exempt financing, if applicable, at least 20 days prior to the submission of any such application. 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 and the Seller 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.

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 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 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**”): nominating the Tax Credit Partnership to take title to the Project at the Closing, or any assignment or transfer of this Agreement to the Tax Credit Partnership, provided that in either event, the City has reasonably approved all general partners thereof.

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 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 covenants and consideration as set forth in this Agreement, upon satisfaction or waiver of the City's Conditions Precedent to Closing, the City shall enter into the Ground Lease and Ground Lease Memorandum. Developer agrees 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.

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 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 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.

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 consideration that Developer is delivering to the City 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 of the Property and the closing of the City Loan and the Seller 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. [Intentionally deleted.]

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, an owner’s policy of title insurance, in such amounts and with such endorsements as agreed to between Developer and the Title Company, which at Developer’s option may be an ALTA extended coverage owner’s policy provided that Developer satisfies all requirements therefor (the “**Developer Title Policy**”) (provided, however, that it shall not be a Developer Condition Precedent to Closing that any Developer Title Policy be in any particular amount or include any specific endorsements), insuring that Developer has a valid leasehold interest in the 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 policy, 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, lender’s policies of title insurance in the amounts of the City Loan and the Seller Loan, respectively, 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 (collectively, the “**City Lender Policies**”), insuring (a) the lien of the City Deed of Trust to be a first priority lien on the Project after the lien of the Senior Loans and (b) the Seller Deed of Trust to be a second priority lien on the 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 Conveyance Documents to the extent signed by Developer, duly executed by Developer and acknowledged.
- (B) The Ground Lease, duly executed by Developer.
- (C) The City Loan Documents, duly executed by Developer and acknowledged where appropriate.
- (D) The Seller Loan Documents, duly executed by Developer and acknowledged where appropriate.
- (E) The Disbursement Agreement (if applicable), duly executed by City, Developer, and the Construction Lender (which may be deposited with Escrow one (1) Business Day prior to the Closing date).
- (F) 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).
- (G) Sufficient funds to pay 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 Conveyance Documents, duly executed by the City and acknowledged.
- (B) The Ground Lease, duly executed by the City.
- (C) The City Loan Documents, duly executed by the City and acknowledged where appropriate.
- (D) The Disbursement Agreement, if applicable.
- (E) 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.
- (F) Any other documents or other deliverables reasonably requested by Developer or the Escrow Agent.

(G) 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 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.

(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 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 Policies. The City shall have received from Title Company an irrevocable commitment to issue the City Lender Policies upon the recordation of the City Deed of Trust and Seller 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 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 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**"), to the extent applicable to the 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. 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 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 Policy. The Title Company shall be irrevocably committed to issue the Developer Title Policy 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 effective no later than the Closing, and City shall have demonstrated the ability to deliver valid leasehold title to the City Property to Developer free and clear of any tenants, lessees, licensees or any third party occupants or parties in possession.

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

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. No proceeds shall be disbursed from the Seller Loan.

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.

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 Project and the use, operation and maintenance of the 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, the City Loan Documents and the Seller Loan Documents, or (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. City Advance. Within five (5) business days of execution of this Agreement by Developer and City, Developer shall deliver to City the amount of \$40,000 (the "**City Advance**"); provided that Developer shall receive a credit against the City Advance in the

amount of \$25,000, reflecting a previous payment from Developer to the City pursuant to the Exclusive Negotiating Rights Agreement entered into as of December 19, 2018 between Developer and City.

The City Advance shall be used by the City for reasonable costs and expenses in connection with this Agreement, the documents attached hereto, ancillary documents and the transactions described therein (collectively, “**Consultant Costs**”). If, as of the earlier of the date of Closing or the Outside Closing Date, any portion of the City Advance has not been utilized for Consultant Costs, the remaining balance of the City Advance shall be returned to Developer.

If at any time the City reasonably expects to expend more than the City Advance for Consultant Costs prior to the earlier of the date of Closing or the Outside Closing Date, then the City shall provide written notice of such expenditure, which notice shall include a schedule of the Consultant Costs that City has incurred, an estimate of the additional Consultant Costs and the additional amount that City is requesting to pay for Consultant Costs. Developer shall either deposit such additional amount with the City, which amount shall be added to the City Advance, or shall provide any written objections within 5 business days of receipt of the request. If Developer provides a written objection, City and Developer shall meet within 5 business days of receipt of the written objection to discuss the requested amount and reach an agreement on the additional amount, and Developer shall deposit the agreed upon amount with the City within 2 business days of such agreement, which amount shall be added to the City Advance.

Notwithstanding anything to the contrary in this Agreement: (a) 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; and (b) the City Advance shall be retained by City in connection with a termination of this Agreement arising from an Event of Default by Developer.

3.14. Parks and Dwelling Unit Tax Requirements

Developer acknowledges its obligation to comply with Santa Clara City Code Chapter 17.35 (or any successor statute).

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.

4.2. The City Loan and Seller Loan

4.2.1 Closing

As of the Effective Date, the City hereby commits to providing the City Loan and the Seller Loan to Developer, subject to the terms and conditions set forth herein. Upon Closing, the City shall loan to Developer and Developer hereby agrees to borrow from the City, the City Loan and the Seller Loan in accordance with the City Loan Documents and the Seller Loan Documents.

4.2.2 Subordination

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 Project can be constructed and operated as proposed by 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 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 Project and the Improvements located thereon. In no event shall 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.

5.3. Construction Contract

If the City has not previously approved the Contractor, then at least 45 days prior to the Closing, Developer shall deliver to the City the name, resume and financial statement of the proposed Contractor for approval by the City, which shall not be unreasonably withheld, delayed or conditioned. 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 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 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 Project or any part thereof, that the 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 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 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 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 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 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 Project to the City prior to Closing. Developer covenants and agrees to provide Social Services to the residents of the 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 Freebird 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 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 Freebird 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.

INITIALS: CITY _____ DEVELOPER _____

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.

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. Termination of this Agreement

Except for indemnification obligations of Developer hereunder, this Agreement shall terminate 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: Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimbler

Copy to: Gubb and Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attention: Evan A. Gross

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 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 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 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 or the Seller 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.

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 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.

8.14. Restated Agreement

This Agreement amends and restated in its entirety the Original Agreement.

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 AMENDED AND RESTATED DISPOSITION AND
DEVELOPMENT AGREEMENT]

[PAGE 1 OF 2]

“DEVELOPER”

**FREEBIRD DEVELOPMENT COMPANY,
LLC**, a California limited liability company

By: _____
Robin Zimbler, Manager

[SIGNATURE PAGE TO AMENDED AND RESTATED DISPOSITION AND
DEVELOPMENT AGREEMENT]

[PAGE 2 OF 2]

ATTACHMENT A

LEGAL DESCRIPTION OF CITY PROPERTY

Real property in the City of Santa Clara, County of Santa Clara, State of California, being a portion of Parcel 3 described in the Deed to the County of Santa Clara, recorded February 2, 1962, in Book 5453 of Official Records, Page 669, Santa Clara County Records, described as follows:

Beginning at the most Northerly corner of Lot 30 as shown on that certain Map of Tract 2896 filed for record on May 11, 1961 in Book 132 of Maps, Pages 38 and 39, Santa Clara County Records.

Thence along the Northeasterly line of said Parcel 3, North $26^{\circ} 09' 22''$ East, 14.01 feet; thence North $64^{\circ} 01' 08''$ West, 147.59 feet; thence North $73^{\circ} 07' 44''$ West, 63.92 feet; thence along a tangent curve to the left, having a radius of 60.00 feet; through a central angle of $62^{\circ} 52' 15''$ for an arc length of 65.84 feet; thence South $44^{\circ} 00' 01''$ West, 274.40 feet;

Thence along a tangent curve to the left, having a radius of 962.00 feet, through a central angle of $16^{\circ} 07' 44''$ for an arc length of 270.81 feet, to the Northwesterly line of Lot 19 as shown on that certain Map of Tract 2992 filed for record on June 21, 1961, in Book 134 of Maps, Pages 26 and 27, Santa Clara County Records;

Thence along the Northwesterly and Northerly lines of Lots 19 through 25 of said Map of Tract 2992 and along the Northwesterly line of Lots 27 through 30 of said Map of Tract 2896, the following five courses:

1. Thence along a non-tangent curve to the right, having a radius of 1200.00 feet, whose center bears South $59^{\circ} 19' 45''$ East through a central angle of $0^{\circ} 10' 12''$ for an arc length of 3.56 feet;
2. Thence along a compound curve to the right, having a radius of 150.00 feet, through a central angle of $53^{\circ} 58' 00''$ for an arc length of 141.28 feet;
3. Thence North $84^{\circ} 48' 27''$ East, 213.98 feet;
4. Thence along a tangent curve to the left, having a radius of 225.00 feet, through central angle of $49^{\circ} 33' 01''$ for an arc length of 194.58 feet;
5. Thence North $35^{\circ} 15' 26''$ East, 197.75 feet, to a point of beginning.

APN: 224-37-068

ATTACHMENT B
SCHEDULE OF PERFORMANCE

Permit Application July 31, 2021

Submit 4% CDLAC & TCAC applications August 31, 2021

Outside Closing Date April 30, 2022

Construction Start [TBD]

Construction Completion [TBD]

PIS [TBD]

100% Occupied [TBD]

8609 Certification [TBD]

ATTACHMENT C
[RESERVED]

ATTACHMENT D
INSURANCE REQUIREMENTS

[attached]

ATTACHMENT E
FINANCING SUMMARY

ATTACHMENT F

PERMITTED EXCEPTIONS

1. Taxes and assessments, general and special, are currently not assessed because of a statutory exemption. Should the statutory exemption change, taxes may be levied against the land.
2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.
3. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Granted To : City of Santa Clara, a municipal corporation

For : sanitary sewer purposes

Recorded : June 26, 1961 in Book 5210 of Official Records, Page 674 under Recorder's Serial Number 2018642

Affects : as described therein

4. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following Granted To : City of Santa Clara, a municipal corporation

For : storm drainage purposes

Recorded : June 26, 1961 in Book 5210 of Official Records, Page 677 under Recorder's Serial Number 2018643

Affects : as described therein

5. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Granted To : City of Santa Clara, a municipal corporation

For : storm drain purposes

Recorded : September 14, 1961 in Book 5296 of Official Records, Page 608 under Recorder's Serial Number 2060294

Affects : as described therein

6. Release and relinquishment of abutter's or access rights to and from San Tomas Expressway, upon which premises abuts, as follows:

Instrument : Grant Deed Individual

To : County of Santa Clara

Recorded : February 2, 1962 in Book 5453 of Official Records, Page 669 under Recorder's Serial Number 2135068

7. Terms and provisions as contained in an instrument,

Entitled : Assignment and Assumption Agreement (Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Low and Moderate Income Housing Projects)

Executed By : City of Santa Clara, City of Santa Clara Housing Authority and Redevelopment Agency of the City of Santa Clara

Recorded : June 23, 2011 in Official Records under Recorder's Serial Number 21216118

8. Terms and provisions as contained in an instrument,

Entitled : Grant Deed

Executed By : Redevelopment Agency of the City of Santa Clara and City of Santa Clara Housing Authority

Recorded : June 23, 2011 in Official Records under Recorder's Serial Number 21216119

ATTACHMENT G
GROUND LEASE
[attached]

ATTACHMENT H
MEMORANDUM OF GROUND LEASE
[Attached to Ground Lease]

ATTACHMENT I
CITY LOAN AGREEMENT
[attached]

ATTACHMENT J-1
CITY PROMISSORY NOTE
[attached]

ATTACHMENT J-2
SELLER PROMISSORY NOTE
[attached]

ATTACHMENT K-1
CITY DEED OF TRUST
[attached]

ATTACHMENT K-2
SELLER DEED OF TRUST
[attached]

ATTACHMENT L-1
CITY ASSIGNMENT OF RENTS AND LEASES
[attached]

ATTACHMENT L-2

SELLER ASSIGNMENT OF RENTS AND LEASES

[attached]

ATTACHMENT M
CITY ASSIGNMENT OF AGREEMENTS
[attached]

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 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 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 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 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 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 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
[RESERVED]

ATTACHMENT P
CITY REGULATORY AGREEMENT
[attached]

ATTACHMENT Q

GRANT DEED

[attached]

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO
AND MAIL TAX STATEMENTS TO:
[Tax Credit Partnership]
c/o Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimble

Space above this line for Recorder's use

**GRANT DEED
(Improvements)**

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 [Tax Credit Partnership], a California limited partnership (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: _____
Deanna J. Santana, City Manager

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

[Improvements legal description]

ATTACHMENT R

[RESERVED]

ATTACHMENT S
CITY ENVIRONMENTAL INDEMNITY
[attached]