

LOAN AGREEMENT

(AFFORDABLE HOUSING PROJECT)

by and between

THE CITY OF SANTA CLARA,

and

SANTA CLARA 701, L.P.

LOAN AGREEMENT

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into by and between THE CITY OF SANTA CLARA (“**City**”) and Santa Clara 701, L.P., a California limited partnership (“**Borrower**”) or its Assignee, as of December 1, 2020. City and Borrower agree as follows:

PART 1. SUBJECT OF AGREEMENT

Section 1.1 Purpose of Agreement

a. 2302 Calle Del Mundo, an affordable residential rental development, is to be constructed at 2302 Calle Del Mundo, Santa Clara, APN: 097-46-024 (the “**Property**”), and the proposed project consists of 150 affordable apartment units with approximately 86,520 rentable square feet and approximately 5,000 square feet of general retail (the “**Commercial Space**”). The apartments units shall be leased as follows:

	Studio	1-bedroom	2-bedroom	3-bedroom	<i>Total:</i>
30% AMI Household(s)	8	5	2	0	<i>15</i>
50% AMI Household(s)	32	14	8	3	<i>57</i>
70% AMI Household(s)	41	18	8	0	<i>67</i>
80% AMI Household(s)	7	3	0	0	<i>10</i>
“ Management Unit(s) ”	0	0	1	0	<i>1</i>
Total:	88	40	19	3	<i>150</i>

The foregoing units to be developed on the Property, excluding the Management Unit, are referred to herein as the “**Affordable Units**”. Borrower’s fee interest in the Property and the improvements to be constructed on the Property (including the Affordable Units and the Management Unit), together with the development thereof in accordance with this Agreement, is referred to herein as the “**Project**”.

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

c. The project will conform to the existing design, environmental, and efficiency standards set in the approved Conditions of Approval with just a few minor revisions to the original development scope. Common area amenities will include a courtyard and outdoor terraces, barbecue and lounge areas, a fitness center, lobby and clubroom.

b. City is concurrently herewith making a loan to Borrower in the original principal amount of Six Million Dollars (\$6,000,000) (the “**City Loan**”) to provide financial assistance for the development of the Project. The City Loan is evidenced by that certain Promissory Note in the original principal amount of Six Million Dollars (\$6,000,000) dated as of even date herewith made by Borrower in favor of City (the “**City Note**”) and secured by that certain Subordinated Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Borrower is the Trustor, First American Title Company is the Trustee, and City is the Beneficiary, dated as of the date hereof (the “**City Deed of Trust**”) and encumbering the Project.

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

Section 1.2 Definitions

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

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

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

“**70% AMI Household(s)**” shall mean a household whose aggregate gross income equals 70% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

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

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

“Affordable Rent” shall mean an amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum rent to be charged by Borrower and paid by the Qualified Tenant occupying the Affordable Units as determined pursuant to the TCAC Regulations. The tenant utility allowance, if any, shall be determined by the Santa Clara County Housing Authority. The calculation of Affordable Rent shall be performed annually.

“AMI” shall mean the median family income figures and standards (adjusted for actual Household size) utilized by TCAC.

“Annual Project Budget” is defined in Section 5.4.

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

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

“Change Order” shall mean any individual change order which results in a change made to, or any amendments of, the Construction Contract or the Plans and Specifications.

“City” shall mean the City of Santa Clara, California

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

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

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

“City Environmental Indemnity” shall mean the Environmental Indemnity executed by Borrower for the benefit of the City, dated as of the date hereof.

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

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

“City Loan Documents” shall mean this Agreement, the City Promissory Note, the City Deed of Trust, the City Assignment of Rents and Leases, the City Assignment of Agreements, the City Environmental Indemnity and the City Regulatory Agreement, any amendments and modifications thereto, and any other instruments and agreements executed by Borrower with respect to the City Loan.

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

“City Regulatory Agreement” means the [Affordable Housing Agreement made as of the date hereof between City and Borrower and recorded against the Project, and the Agreement Containing Covenants between City and Borrower to be recorded against the Project in accordance with the Affordable Housing Agreement].

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

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

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

“Construction Loan” shall mean the loan for the construction of the Project made to Borrower from [TBD] (**“Construction Lender”**), secured by the Construction Loan Deed of Trust.

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

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

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

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

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

“Developer Fee” means the developer fee to USA Multifamily Development, Inc, a California corporation, as **“Developer”**, in an amount not to exceed the amount allowed by applicable TCAC Regulations. No interest is allowed on the deferred fee.

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

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

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

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

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

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

authorizations, consents, orders, entitlements, filings or registrations, and actions of any nature whatsoever required from any Governmental Authority in order to commence and complete the construction of the Project.

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

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

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

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

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

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

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

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

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

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

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

“Management Plan” shall mean the plan for the management and operation of the Project.

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

“Permanent Loan” shall mean the 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 [TBD] or other lenders as reasonably approved by the City (**“Permanent Lender”**) and the Project Pro Forma following Conversion, secured by the Permanent Loan Deed of Trust.

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

“Permanent Period” shall mean the period of time from and after Conversion.

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

“Permitted Transfer” shall mean any of the following:

- a. An assignment of this Agreement and all of Borrower’s interests in the Property to an Affiliate;
- b. A conveyance of a security interest in the Property or any portion thereof or interest therein or interest in the Borrower in connection with any Senior Loan and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith;
- c. The inclusion of equity participation in the Borrower by addition of limited partners to Borrower’s partnership or similar mechanism, and any transfers of limited partnership interests in Borrower’s partnership;
- d. The lease for occupancy of all or any part of the Improvements on the Property;
- e. The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement;
- f. The withdrawal, removal and/or replacement of a general partner of Borrower pursuant to the terms of the Borrower’s partnership agreement, provided that any required substitute general partner is reasonably acceptable to City and is selected with reasonable promptness. The Investor Limited Partner or an Affiliate thereof is an acceptable successor general partner of Borrower;
- g. the assignment or replacement of the original managing general partner in the Borrower with a nonprofit public benefit corporation or Affiliate thereof, provided that any new general partner is reasonably acceptable to City; and
- h. The sale, transfer or pledge of any limited partnership interest in Borrower or of any partnership interest in the Investor Limited Partner.

“Person” shall mean an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

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

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

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

“Property” shall mean the real property described in Section 1.1(a) hereof.

“Property Manager” shall mean a property manager engaged by Borrower to manage the Project.

“Qualified Tenant(s)” shall mean a Household who qualifies as a 30%, 50%, 70% or 80% AMI Household, as applicable.

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

“Rent Schedule” shall mean the schedule calculating the Affordable Rent for the Project.

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

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

“Scope of Development” shall mean the document attached to this Agreement as Attachment No. 3 which is incorporated herein by this reference.

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

“Senior Loan” shall mean, during the Construction Period, the Construction Loan and during the Permanent Period, the Permanent Loan.

“Senior Loan Documents” shall mean, as applicable, the Construction Loan Deed of Trust and the Permanent Loan Deed of Trust, loan agreements, promissory notes, financing statements,

guaranties, security agreements, assignments, and similar documents and instruments to be executed by Borrower in connection with the Senior Loans.

“Subordination Agreement” shall mean an agreement between each Senior Lender and the City in such form as is reasonably approved by the Senior Lender and the City that subordinates the City Loan and City Loan Documents to the Senior Loan and Senior Loan Documents; provided, however, that the City Regulatory Agreement shall not be subordinated to Senior Lender or to any other lender, loan or monetary lien.

“TCAC” shall mean the California Tax Credit Allocation Committee.

“TCAC Regulations” shall mean 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 First American Title Insurance Company.

Section 1.3 The Property

The Property is owned by Borrower, as described in the “Legal Description of the Property” (attached hereto as Attachment No. 1).

Section 1.4 City

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

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

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

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

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

Section 1.5 Borrower

Borrower is Santa Clara 701, L.P., a California limited partnership. The address of Borrower for purposes of receiving notices pursuant to this Agreement is as follows:

To the Borrower: Santa Clara 701, L.P.
c/o USA Properties Fund, Inc.
3200 Douglas Blvd., Suite 200 Roseville, CA 95661
Attention: Geoffrey Brown

Copy to: The Pinyon Group LLC
949 S. Hope Street, Suite 100
Los Angeles, CA 90015
Attention: Jay Stark

Copy to: Bocarsly Emden Cowan Esmail & Arndt LLP
633 W. 5th Street, 64th Floor
Los Angeles, CA 90071
Attention: Kyle Arndt, Esq.

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

Section 1.6 Assignments and Transfers

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

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

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

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

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

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

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

PART 2. CITY LOAN

Section 2.1 City Loan

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

Section 2.2 Disbursement

Upon satisfaction of the Closing Requirements, the City Loan in a single lump sum shall be disbursed to Borrower in accordance with this Agreement. Notwithstanding anything to the contrary herein, the City shall not be obligated to provide the City Loan if the closing of the City Loan does not occur on or prior to such date.

City shall have no obligation to disburse any additional proceeds after the initial disbursement of the City Loan.

Section 2.3 [Intentionally deleted.]

Section 2.4 Subordination

City agrees that the City Loan and City Loan Documents (except the City Regulatory Agreement) shall be subordinate to the lien of each Senior Loan. City agrees to make such

modifications to this Agreement, and to execute such estoppel certificates, as may reasonably be requested by a Senior Lender and the Investor Limited Partner, provided that such modifications or certificates are consistent with the purpose of this Agreement and do not materially adversely affect the receipt of any material benefit by City hereunder. The City shall execute such Subordination Agreements as may reasonably be requested by any Senior Lender.

Section 2.5 Construction Loan

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

Section 2.6 [Intentionally deleted.]

Section 2.7 [Intentionally deleted.]

Section 2.8 No Prepayment of Junior Debt

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

Section 2.9 No Pledging of City's Credit

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

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

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

Section 2.11 Ground Breaking and Grand Openings

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

PART 3. DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Approvals; Land Use Restrictions

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

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

Section 3.2 Permits and Entitlements

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

Section 3.3 Condition of the Property

City makes no representation or warranty, express or implied regarding any conditions of the Property. It shall be the sole responsibility of the Borrower, at the City's expense, to investigate and determine all conditions of the Property and its suitability for the uses to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is

the sole responsibility and obligation of the Borrower, without cost to City, to take such action as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

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

Section 3.4 Scope of Development; Modification of Closing Requirements

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

Section 3.5 Design; Architectural Quality

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

Section 3.6 Cost of Construction

The cost of planning, designing, developing and constructing the Project shall be borne solely by Borrower. Borrower will begin and complete all construction, development and other tasks specified therein within the times specified in the Schedule of Performance, subject to Force

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

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

Section 3.7 Schedule of Performance; Construction of Improvements

Borrower shall begin and complete all construction and development within the times specified in the Schedule of Performance, with such reasonable extensions of said times as may be granted by the City and subject to Force Majeure Delay. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing by Borrower and City. In the event that the sum of the proceeds of the City Loan available for disbursement together with any other sources to complete the construction of the Improvements are, or at any time become, in the reasonable judgment of the City, insufficient to pay all costs to achieve Completion in accordance with this Agreement, then Borrower will pay such costs.

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

Section 3.8 Construction Contract

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

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

Section 3.9 Subcontracts

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

Section 3.10 Role of Architect

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

Section 3.11 Commercial Space

Upon closing of the Loan, the Property and the Project will consist of two air condominium units: (a) the Commercial Space, and (b) the balance of the Property. For purposes of the City Loan Documents, the “**Property**” and the “**Project**” shall include the Commercial Space and, upon the disposition of the Commercial Space in accordance with this Agreement, the terms “**Property**” and the “**Project**” shall no longer the Commercial Space.

The Commercial Space shall be constructed by Borrower and transferred to [name] or its successors and assigns (the “**Commercial Space Owner**”) upon completion of the Commercial Space in exchange for a purchase price of \$1,800,000 (the “**Commercial Space Purchase Price**”) pursuant to the [describe agreement governing sale], a copy of which has been provided to the City (the “**Commercial Space PSA**”). Developer shall cause the Commercial Space to be sold in accordance with the Commercial Space PSA. Upon the transfer of the Commercial Space to the Commercial Space Owner and the payment of the Commercial Space Purchase Price, the City shall release any security interest held thereby in the Commercial Space, and shall release the Commercial Space from the City Regulatory Agreement.

Except with the written approval of the City, which shall no be unreasonably withheld, conditioned or delayed, Borrower shall comply with the Commercial Space PSA and shall not dispose, sell, lease or otherwise transfer or convey any interest in the Commercial Space or any portion thereof except in accordance with the Commercial Space PSA.

[Revisit and modify terms as necessary prior to loan closing.]

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

Borrower shall cause the construction of the Project and the payment of all wages in connection therewith to be in accordance with the provisions of California Labor Code §§ 1720 through 1861 (collectively, the “**Prevailing Wage Law**”), to the extent applicable to the Project.

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

limited to officers, agents, employees or contractors of Borrower. Notwithstanding the foregoing, Borrower shall not be required to indemnify and hold harmless the City Indemnitees for liability attributable to the gross negligence or intentional misconduct of the City Indemnitees.

Section 3.13 Compliance with Law

Borrower shall comply with all Governmental Regulations in the construction, use and operation of the Project, including all applicable federal, state and local statutes, ordinances, regulations and laws, including without limitation, all applicable federal, state, and local labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Santa Clara City Code, and all applicable disabled and handicapped access requirements, including without limitation (as currently exists or may be amended from time to time) the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq., Government Code § 4450, et seq., and Government Code § 11135, et seq.

Section 3.14 Nondiscrimination During Construction

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

Section 3.15 General Indemnity

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

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

Section 3.16 Insurance Requirements

During the term of this Agreement or the City Regulatory Agreement, and for any time required thereafter as set forth below, the Borrower shall purchase and maintain in full force and effect, at no cost to the City, the following insurance policies:

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

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

Section 3.17 Disclaimer of Responsibility by the City

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

Section 3.18 Rights of Access

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

work being performed in constructing the Improvements. Such representatives of City shall be those who are so identified in writing by City.

Section 3.19 Taxes and Assessments

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

Section 3.20 Liens and Stop Notices

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

Section 3.21 Rights to Architectural Agreements and Plans and Specifications

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

Section 3.22 Security Financing; Right of Holders

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

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

(c) Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure Whenever the City will deliver any notice or demand to Borrower with respect to any breach or default by Borrower in completion of construction of the Improvements, the City will at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest recorded against the Project, provided that failure to provide such notice shall not affect the City's remedies hereunder. Each holder will (insofar as the rights of the City are concerned) have the right at its option within thirty (30) calendar days after the receipt of the notice, to cure or remedy or commence to cure or remedy any default and to add the cost to the security interest debt and the lien on its security interest. Nothing contained in this Agreement will be deemed to permit or authorize the holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed Borrower's obligations to the City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform the obligations. Any holder properly completing the Improvements will be entitled, upon written request made to the City, to a Release of Construction Covenants from the City.

Section 3.23 Liens on Personal Property

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

Section 3.24 Removal of Personal Property

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

Section 3.25 Release of Construction Covenants

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

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

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

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

Section 3.26 Developer Fee

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

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

In the event that actual construction costs exceed the Construction Budget, Borrower shall defer the amount of the Developer Fee necessary to cover the actual construction costs to the extent unfunded by sources other than the City Loan and such portion of the Developer Fee shall be considered deferred Developer Fee for purposes of this Agreement.

PART 4. COMPLIANCE WITH LABOR LAWS

Borrower shall comply with all applicable prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 276a-276a-5); the Copeland “Anti-Kickback” Act (47 USC 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 USC 327-333) which requires that workers receive “overtime” compensation at a rate of 1-1/2 times their regular hourly wage after they have worked 40 hours in one week; and Title 29, Code of Federal Regulations, Subtitle A, parts 1.3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended. Borrower shall also comply with all applicable provisions of California Labor Code and regulations promulgated thereunder (including without limitation, Sections 1720 et seq. and Title 8 of the California Code of Regulations Sections 16000 et seq.) governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations, in regards to work performed and/or funded under this Agreement.

Upon the written request of the City, Borrower shall provide written evidence of compliance with this Part 4.

PART 5. USE OF THE PROPERTY

Section 5.1 Use Covenants

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

Section 5.2 Affordable Housing Requirements

(a) Affordable Units

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

(b) Duration of Affordability Requirements

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

(c) Selection of Qualified Tenants

Prior to selecting any tenants for the Affordable Units, Borrower shall submit to the City the Management Plan (the terms of which shall comply with the City Regulatory Agreement) which shall include proposed tenant selection policies and criteria for the Affordable Units. The City shall review the Management Plan and approve or disapprove it within thirty (30) Business Days, provided that such approval shall not be unreasonably conditioned or withheld. City's failure to respond within the timeframe set forth in the preceding sentence shall be deemed approval. If the Management Plan is not approved by the City, the City shall set forth in writing and notify Borrower of the City's reasons for withholding such approval. Borrower shall thereafter submit a revised Management Plan for City approval within fifteen (15) Business Days, which approval shall be granted or denied within fifteen (15) Business Days in accordance with the procedures set forth above.

In addition, the tenant selection policies and criteria shall:

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

Borrower shall manage and operate the Property in accordance with the approved Management Plan, including such amendments as may be approved in writing from time to time by the Borrower and the City, for the entire Restricted Period.

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

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

(d) Income Requirements

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

(e) Lease Requirements

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

Section 5.3 Long Term Management of the Project

Borrower and the Property Manager shall enter into a written agreement regarding the services of the Property Manager (the "**Management Agreement**"). Property management fees paid to the Property Manager shall not exceed nine percent (9%) of gross rents on an annual basis. The Management Agreement shall contain, inter alia, an express provision (a) obligating the Property Manager to cooperate fully with the City with respect to the on-site inspections to be made by the City pursuant to the City Regulatory Agreement, and (b) indicating that the term thereof shall not exceed twelve (12) months including a provision for termination by Borrower with or without cause at any time upon notice not to exceed thirty (30) days. Borrower shall obtain the City's written approval, not to be unreasonably withheld, conditioned or delayed, of the Property Manager prior to entering into any Management Agreement; provided that the City hereby approves USA Multifamily Management, Inc. as the initial Property Manager.

Section 5.4 Annual Budget and Quarterly Reporting

Borrower shall submit on or before the first day of each fiscal year after Completion of construction for the entire Restricted Period an estimated annual budget for management of the Property (the "**Annual Project Budget**") in accordance with the Management Plan. The Annual Project Budget shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amount required for insurance and all other expenses incident to the operation of the Project; and shall show the expected revenues to pay such expenses, including annual debt service requirements and reserve fund deposits and balances. Upon receipt by the City of a complete the Annual Project Budget, including any amendments proposed by the Borrower, shall be subject to the approval of the City, the City shall promptly review the same and approve or disapprove it within ten (10) Business Days, provided that such approval shall not be unreasonably conditioned or withheld. If the Annual Project Budget is not approved by the City, the City shall set forth in writing and notify Borrower of the City's reasons for withholding such approval. Borrower shall thereafter submit a

revised Annual Project Budget for City approval within ten (10) Business Days, which approval shall be granted or denied within ten (10) Business Days in accordance with the procedures set forth above. If the City does not disapprove in writing an Annual Project Budget or revision thereof within such ten (10) Business Day period, then such Annual Project Budget shall be deemed approved by the City.

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

Section 5.5 Maintenance of the Property

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

The Maintenance Program shall describe in reasonable detail the standards to be followed in maintaining the interior and exterior of the Improvements, including a schedule indicating the proposed frequency of each element of maintenance, and shall include, at a minimum, the following: periodic cleaning of the interior and exterior of the Improvements, including windows; removing graffiti; removing debris and waste materials and otherwise maintaining indoor and outdoor areas of the Property; maintaining any lawns, plants, shrubs and trees or other landscaping planted on the Property; performing inspections of all exterior features to determine whether repairs are required; conducting periodic protective treatments such as rust removal and caulking; conducting repairs to facades, roof, doors, windows and other exterior features; maintaining fencing and other security devices and systems; periodic repainting of the exterior; periodic repainting of the interior units and common areas; periodic replacing of the interior unit carpets; checking building systems, including, but not limited to the heating and cooling systems, smoke alarms and water heaters; checking interior unit appliances; and monitoring interior unit bathrooms for mold/mildew. The Maintenance Program, including any amendments proposed by the Borrower, shall be subject to the reasonable approval of the City.

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

deficiency, the City shall provide written notice that the Borrower correct the deficiency within a reasonable time. The Borrower shall have a reasonable time in which to comply following such notice from the City.

Section 5.6 Nondiscrimination Covenants

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

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

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

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

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

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

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

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

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

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

Section 5.7 Conflict with the City Regulatory Agreement

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

Section 5.8 Reserves

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

(b) Replacement Reserves. If requested by any Senior Lender or Investor Limited Partner, Borrower covenants and agrees to fund a replacement reserve in a capitalized amount as of the Conversion from operating income on monthly basis in amount required by the Senior Lender or Investor Limited Partner (“**Replacement Reserve**”). Such amounts shall be held in a separate bank account. Funds in the Replacement Reserve shall be used solely to cover capital replacements for the Project. All withdrawals from the Replacement Reserve are subject to the prior written consent of the City, which such consent shall not be unreasonably withheld or delayed.

Section 5.9 Hazardous Substances

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

Section 5.10 City Monitoring Fee

On or before July 1 of each year, commencing on the July 1 following Conversion until the expiration of the Restricted Period, Borrower covenants and agrees to pay to the City the Monitoring Fee (as defined in the City Regulatory Agreement) for the immediately preceding calendar year or portion thereof, prorated for the number of months in the partial year.

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

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

PART 6. DEFAULTS, REMEDIES, AND TERMINATION

Section 6.1 Defaults — General

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

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

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

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

In the event of a default by Borrower of any of its obligations under the City Loan Documents and expiration of any applicable grace, notice and/or cure periods, Borrower shall pay

to City interest on the outstanding principal of the City Loan, at an annual rate equal to the lesser of (i) ten percent (10%) or (ii) the highest interest allowed by law, from the date of the default until the date that the default is cured or the City Loan is repaid in full.

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

Section 6.2 Institution of Legal Actions

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

Section 6.3 Applicable Law

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

Section 6.4 Acceptance of Service of Process

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

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

Section 6.5 Rights and Remedies Are Cumulative

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

Section 6.6 Damages

If either party defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 6.1 and the non-recourse provisions of Section 6.10, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may, after such notice and opportunity to cure (but not before) commence an action for damages against the defaulting party with respect to such default.

Notwithstanding the foregoing, neither Borrower nor City shall have the right to recover any punitive, consequential, or special damages.

Section 6.7 Specific Performance

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

Section 6.8 Termination by Either Party

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

Section 6.9 Automatic Termination

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

Section 6.10 Limited Recourse Obligations

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

Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by the City Note or the City Deed of Trust; (b) limit the right of the City to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under the City Note or the City Deed of Trust or any action or proceeding thereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Borrower; (c) release or impair the City Note or the City Deed of Trust; (d) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing the City Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing the City Note; (f) relieve Borrower of any of its obligations under any indemnity delivered by Borrower to City; or (g) affect in any way the validity of any guarantee or indemnity from any person other than the Borrower of all or any of the obligations evidenced and secured by the City Note or the City Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Borrower shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Borrower, its principals, shareholders, partners received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or

other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the Property, ordinary and reasonable capital improvements to the Property, debt service, real estate taxes in respect of the Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, City may recover directly from Borrower or from any other party:

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

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

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

Section 6.11 Borrower Representations and Warranties

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

PART 7. GENERAL PROVISIONS

Section 7.1 Notices

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

Section 7.2 Conflicts of Interest

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

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

Section 7.3 Nonliability of City Officials and Employees

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

Section 7.4 Force Majeure

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

Section 7.5 Inspection of Books and Records

The Borrower shall maintain complete, accurate, and current records pertaining to the Property for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records, during regular business hours upon reasonable advance notice. Records must be kept accurate and current.

Section 7.6 Approvals

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

Section 7.7 Administration

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

Section 7.8 No Third Party Beneficiaries

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

Section 7.9 Reimbursement of Expenses

Borrower shall reimburse the City for all reasonable costs and expenses (including, without limitation, reasonable attorneys’ fees, and the allocated cost of the City staff and resources) incurred by the City in connection with the provision and administration of the City Loan and the City Loan Documents.

Section 7.10 Borrower Authority

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

Section 7.11 No Partnership

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

Section 7.12 Compliance with Law

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

Section 7.13 Binding Effect

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

Section 7.14 Incorporation by Reference

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

Section 7.15 Counterparts

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

Section 7.16 Mutual Cooperation

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

Section 7.17 Construction and Interpretation of Agreement

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

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

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

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

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

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

PART 8. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

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

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

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

[Signatures appear on next page.]

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

CITY:

CITY OF SANTA CLARA,
a chartered California municipal corporation

By: _____
Deanna J. Santana, City Manager

APPROVED AS TO FORM:

By: _____
Brian Doyle, City Attorney

[SIGNATURE PAGE TO LOAN AGREEMENT]

[PAGE 1 OF 2]

BORROWER:

Santa Clara 701, L.P.,
a California limited partnership

[To be completed]

[SIGNATURE PAGE TO LOAN AGREEMENT]

[PAGE 2 OF 2]

ATTACHMENT NO. 1

LEGAL DESCRIPTION

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

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

ATTACHMENT NO. 2

SCHEDULE OF PERFORMANCE

Construction Start[TBD]

Construction Completion[TBD]

PIS[TBD]

100% Occupied[TBD]

Conversion[TBD]

8609 Certification[TBD]

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

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

There is a mix of studios, 1-bedroom, 2-bedroom, and 3-bedroom units ranging in size from 420 square feet to 1,207 square feet.

ATTACHMENT NO. 4

INSURANCE REQUIREMENTS

Without limiting Borrower's indemnification of the City, and prior to closing the City Loan under this Agreement, Borrower shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$5,000,000 Each occurrence
\$5,000,000 General Aggregate
\$5,000,000 Products/Completed Operations Aggregate
\$5,000,000 Personal Injury
\$5,000,000 Project Aggregate
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than five million dollars (\$5,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of five million dollars (\$5,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. POLLUTION LIABILITY

In the event that this contract involves hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors shall provide a Contractor's Pollution Liability Insurance policy with coverage limits not less than five million dollars (\$5,000,000) each claim in connection with the Work performed under this Contract. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." Any deductible must be declared to and approved by City. Such policy shall cover, at a minimum, liability for bodily injury, damage to and loss of use of property, and clean-up costs arising from sudden, accidental and gradual pollution and remediation in connection with the Work under this Agreement. Contractor will use its best efforts to have the City, Council, officers, employees and volunteers added as additional insureds under this policy. The following provisions shall apply:

1. The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.
2. Products/completed operations coverage shall extend a minimum of 3 years after project completion.
3. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors.

4. If the insured is using subcontractors the Policy must include work performed “by or on behalf” of the insured.
5. Policy shall contain no language that would invalidate or remove the insurer’s duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor’s work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 10/01 and CG 20 37 10/01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor’s insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor’s work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer’s equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Document 00820.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Contractor or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.
2. Contractor shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of Contract Documents. Contractor shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time.
3. City reserves the right, at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
4. Any type of insurance or any increase of limits of liability not described in this Exhibit which Contractor requires for its own protection or in compliance with applicable statutes or regulations, shall be Contractors' responsibility and at its own expense.
5. No liability insurance coverage provided by Contractor to comply with the terms of this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor waives its right of subrogation against Indemnitees. Any property insurance policies affected by Contractor shall be endorsed to delete the subrogation condition as to indemnitees or shall specifically allow Contractor to waive subrogation prior to a loss. Contractor hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.
6. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and

review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

7. Contractor shall cooperate fully with City and Contractor's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
8. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
9. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
10. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.
11. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.
12. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
13. Contractor agrees to obtain and provide to City evidence of Professional Liability insurance for Architects or Engineers if engaged by Contractor to perform any of the Services required under this Agreement. City shall determine the minimum coverage and policy limits required, after consultation with Contractor.
14. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. The Contractor's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after

approval from the City Attorney's Office upon satisfactory evidence of financial capacity.

15. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara [*insert City department name here]

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

ATTACHMENT NO. 5

PROJECT BUDGET

(To Be Attached)

ATTACHMENT NO. 6

CLOSING REQUIREMENTS

The following are the Closing Requirements:

1. Closing Documents. Developer and any third party shall have executed and delivered to Title Company, as escrow agent:
 - a. The City Loan Documents, duly executed and acknowledged where appropriate.
 - b. Any other documents or other deliverables reasonably requested by the City or the Title Company (which may be deposited with Title Company one (1) Business Day prior to the Closing date).
2. City Loan Funds. Tasman East Urban Housing, LLC, or its successor or assign, shall have deposited \$6,000,000 with the Title Company on behalf of the City in satisfaction of its inclusionary housing requirements as provided under **[City Council Resolutions No. [October]]**, which shall constitute the City Loan funds
3. Funds. Sufficient funds to pay costs of escrow and title to effect the conveyance of the Property to Borrower (which amounts may be deposited with Escrow on the Closing date), including, without limitation, any costs or expenses of the City due from Borrower under this Agreement.
4. Evidence of Financing. Developer shall have submitted and the City Representative shall have approved Developer's Evidence of Financing in accordance with this Agreement.
5. City Lender Policies. The City shall have received from Title Company an irrevocable commitment to issue a 2006 ALTA extended coverage lender's policy, together with such endorsements as are reasonably requested by the City (collectively, the "**City Lender Policy**"), insuring 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 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) agreements expressly required by this Agreement to be recorded at the Closing, (C) the lien of the Senior Lenders, and (D) any exception to title which may be approved by the City in its reasonable discretion.
6. City Regulatory Agreement. The City shall have received evidence reasonably acceptable to it that the City Regulatory Agreement is, and shall continue to be after closing of the City Loan, senior to all deeds of trust, mortgages and similar liens, which may include a subordination agreement between the City and the holder of any such lien in form and substance reasonably approved by the City.
7. 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.

8. Commercial Space Documentation. The City shall have received and approved, which approval shall not be unreasonably withheld, conditioned or delayed, any and all agreements, whether or not recorded, that governs the relationship between the Commercial Space and the Project following the disposition of the Commercial Space (including, without limitation, any declaration of covenants, conditions and restrictions, a shared use agreement, easements, or any maintenance agreement).
9. 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 Prevailing Wage Law, to the extent applicable to the Project.
10. 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.
11. 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.
12. 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.
13. Construction Budget and Construction Loan. Borrower shall have submitted and obtained the City's approval of the Construction Budget and Construction Loan, showing the construction costs of the Improvements and a sources-and-uses statement showing that the projected funding sources will be available as needed to fund all such projected costs at the time incurred. The City approval of the Construction Loan shall not constitute a waiver by the City of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Loan.
14. Project Pro Forma. Borrower shall have submitted and the City shall have approved the Project Pro Forma.
15. Construction Bonds. To the extent that the Construction Lender and/or the Investor Limited Partner requires payment and performance bonds in connection with the construction of the Project, Borrower shall have obtained and delivered to the City copies of the bonds meeting the Construction Lender's and/or the Investor Limited Partner's requirements for such bonds and naming City as co-obligee.
16. Construction Package. Borrower shall have submitted and the City have approved all material aspects of the construction process, including, without limitation, lists of subcontractors, and other construction related documentation which may be reasonably requested by the City.
17. Plans and Specifications. Borrower shall have submitted and the City shall have approved the Plans and Specifications for the Project.

18. Insurance Requirements. Borrower, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the Insurance Requirements, and shall have provided City with evidence of such insurance.
19. Architectural Contract. Borrower shall have delivered, and the City shall have approved, a contract with the architect of the Project.
20. Corporate Authority; Good Standing. Borrower shall have delivered to the City satisfactory evidence of Borrower's authority to enter into the City Loan Documents, and good standing certificates for the Borrower and its partners dated within thirty (30) days of Closing.
21. Miscellaneous. Borrower shall have delivered to the City any other item reasonably deemed necessary by the City and shall have fulfilled any other condition reasonably required by the City.

ATTACHMENT NO. 7

CONVERSION REQUIREMENTS

1. **No Default.** Subject to applicable notice and cure periods, there shall be no condition, event or act which would constitute an event of default by Borrower under the City Loan Documents, the Construction Contract, the Construction Loan, the Limited Partnership Agreement, or any other agreement secured by an interest in the Project or providing financing for the Project, or which upon the giving of notice or the passage of time, or both, would constitute such an event of default.
2. **Representations and Warranties.** All representations and warranties of Borrower herein contained in this Agreement shall be true and correct in all material respects as and when made and as of the proposed date of conversion to a permanent loan.
3. **No Stop Notice.** No stop notice (whether bonded or not) shall have been served upon or otherwise delivered to Borrower, the City or Construction Lender in connection with the development of the Project or otherwise in connection with the City Loan, unless Borrower shall have (or shall be with the proceeds of a requested disbursement) (a) paid and discharged the same, or (b) effected the release thereof by delivering to the City a surety bond complying with the requirements of applicable Governmental Regulations for such release.
4. **No Liens.** No claim of lien, notice and claim of mechanic's lien or other similar document or instrument shall have been recorded against the Project or any portion thereof, unless Borrower shall have (or shall with the proceeds of the requested disbursement) (a) paid and discharged the same, (b) effected the release thereof by delivering to the City a surety bond complying with the requirements of applicable Governmental Regulations for such release, or by insurance over the same, or (c) caused the Title Company to commit in writing to issue a policy of title insurance showing such lien not to be an exception to title. City shall have received (i) a copy of the recorded notice of completion, and (ii) either (A) evidence that the statutory lien period has expired, or (B) lien waivers from the Contractor and any subcontractors that previously filed a preliminary notice that they are performing work on the Project that may be subject to mechanic's liens
5. **Governmental Regulations.** There shall be no condition, event or act existing in connection with the Project which constitutes, or would, with the passage of time, constitute a material violation of any applicable Governmental Regulation.
6. **Annual Reporting Forms.** Borrower shall have submitted all annual reporting forms required to be submitted to City pursuant to the City Regulatory Agreement as of the date of Conversion.
7. **Evidence of Equity Contribution.** Borrower shall have provided evidence that Borrower has received capital contributions from the Investor Limited Partner in an amount not less the amount required by the Limited Partnership Agreement. Borrower shall have demonstrated to the City's reasonable satisfaction that such monies have been spent in

substantial accordance with the Project Pro Forma or will be spent in accordance with the Project Pro Forma.

8. Rent Schedule; Permanent Pro Forma; Annual Project Budget. Borrower shall have submitted, the following for the Project, all prepared as of the completion of construction: (a) the Rent Schedule; (b) a Permanent Pro Forma; and (c) an Annual Project Budget.
9. Management Plan. Borrower shall have submitted, and City shall have approved, the Management Plan.
10. Social Services Plan. Borrower shall have submitted a social services plan for the Project, including a budget therefor incorporated into the Annual Project Budget.
11. Insurance. Borrower, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the Insurance Requirements and in the amounts specified therein.
12. Construction Loan. The Construction Loan shall be paid in full with all available funds, or paid down, as applicable, and converted to a permanent loan. Any documents required to be recorded in connection therewith shall be executed and recorded in the Official Records.
13. Reserves. Borrower shall have deposited or will be concurrently depositing any reserves required by this Agreement and the Project Pro Forma into one or more separate interest-bearing accounts to be used solely for the Project.
14. Final Cost Certificate. Borrower shall have provided City with a copy of the Final Cost Certificate.*[Change to draft cost cert if final not required by investor.]*
15. Commercial Space. The Commercial Space shall have been sold as provided in Section 3.11 of this Agreement.