

**Mary Avenue  
Mary Avenue and Parkwood Drive, Cupertino  
Basic Lease Information Sheet  
8.02.2023**

Effective Date: \_\_\_\_\_.

Tenant: A to be formed LP, with a to be formed LLC as managing general partner of the partnership with Charities Housing Development Corporation of Santa Clara County (“Charities Housing”), as its sole member and manager.

Developer/Sponsor: Charities Housing Development Corporation of Santa Clara County

Premises: That certain parcel of land including all improvements and buildings to be constructed thereon, located on approximately .79 acres within a portion of the Mary Avenue Right-of-Way in Cupertino. TBD

Use of Premises: Affordable Housing as defined herein containing approximately 32,326 gross square feet of residential and ancillary service space dedicated to directly serving the residents, including social service and property management offices, community rooms, lounge areas, laundry rooms etc., for the Term of the Lease.

"Affordable Housing" as defined herein means approximately thirty-nine (39) units of Affordable Housing for the Extremely Low and Very Low-Income households (as more particularly described below, at 30% and 50% of AMI). Nineteen (19) of these units are anticipated to provide housing for individuals who are Intellectually and Developmentally Disabled (“IDD”). In addition to the 39 residential units, one (1) unrestricted staff unit will be provided.

The following is the unit mix for the Affordable Housing, in which the following rent and income restrictions based on percentage of Area Median Income (AMI) apply:

Unit Size and affordability	30% AMI	50% AMI	Unrestricted (Managers)	Total
Studios	5	0	0	5

1-BRs – 562 SF	11	8	0	19
2-BRs – 784 SF	4	11	1	16
Total	20	19	1	40

With the consent of the City, the unit mix and the affordability restrictions may be changed for the sole purpose of facilitating the financing and development of the Project.

It is proposed that 47.5% of the units will be reserved for individuals or families with at least one member living with an intellectual or developmental disability (IDD). The developers expect that 14 of these households will be extremely low income (ELI) and 5 will be very low income (VLI). Potential tenants for the IDD units will be referred by Housing Choices Coalition through their memorandum of understanding with the San Andreas Regional Center (“SARC”). Resident services and coordination for these units will be overseen by Housing Choices Coalition and funded by SARC.

Sponsor/Developer shall construct an anticipated total of 40 units in a single phase. Construction of the Affordable Housing will occur within seven (7) years of the execution of this Term Sheet by both Parties.

Building: Not Applicable

Term: The Term shall commence on the Term Commencement Date and expire at 11:59pm Pacific Coast Time eighty-five (85) years thereafter (“Initial Term”). Tenant will have one (1) option to renew the Lease, subject to City advance approval on terms acceptable to the City for a total maximum Term of no more than ninety-nine (99) years.

Delivery Date: The date on which Landlord grants possession of the Premises to Tenant and Tenant accepts delivery, which shall not occur earlier than the Effective Date and no later than the Term Commencement Date.

Due Diligence Period: Tenant will have 365 days from the Effective Date to access and investigate the Premises, to perform any and all due diligence, including any environmental assessments, appraisals, surveys, geotechnical investigations, easement agreements with Caltrans and any other assessment deemed necessary.

Entitlement Period: Tenant will have until September 2026 to secure initial plans for construction of the Premises and to determine the likelihood of procuring all approvals or permits, including where applicable compliance with the California Environmental Quality Act and the National Environmental Protection Act, necessary to start construction of the Affordable Housing on the Premises in order to provide Affordable Housing on the Premises. Tenant may cancel this Agreement for any reason any time prior to Commencing Construction. For purposes hereof, "Commencing Construction" shall mean the closing and initial funding of construction financing and the commencement of construction of the Affordable Housing under the terms thereof. Understanding that a DA would be proposed which would allow a longer entitlement period.

Deposit: There will be no performance deposit associated with this Ground Lease.

Term Commencement Date: The Term Commencement Date is the date of the close of construction financing for the Project Improvements with the construction lender (the "Project Financing").

Affordability Adjustments: To the extent necessary for the Project to maintain financial feasibility, the City will allow the income and rent restrictions to increase and allow the intellectually and developmentally disabled (IDD) unit requirements to be dropped for a percentage of the units to be reasonably determined by City upon Tenant's written request in the event of a loss or reduction in Section 8 rental and/or other subsidy through no fault of the Tenant, its employees, agents, officers, directors, agents, subsidiaries, financiers, lenders, contractors or assigns. As determined by City, any Affordability Adjustment shall conform to the following requirements, at a minimum:

1. The Affordability Adjustment may result in increased AMI levels only to the extent necessary for the Premises to be operated without a negative cash flow, as determined in consultation with the senior lender and tax credit investor;
2. While 20 of the units will be reserved for ELI and 19 units will serve IDD households, all of the units must continue to have (subject to all applicable laws, including, without limitation, tax credit regulations):
  - a. Set asides or preferences for IDD households to be determined by the City, except to the extent the preference must be changed to allow the Project to maintain financial feasibility.

b. Developer/Sponsor shall continue to process applicants who are direct referrals from Housing Choices Coalition/SARC. If the Housing Choices Coalition/SARC is unable to provide Developer/Sponsor a referral for a vacant unit within thirty days of unit availability, then Developer/Sponsor may seek rental applications for that unit from other sources.

**Subordination of Lease:** The City will not subordinate the affordability and population requirements to the Construction and Permanent Lender(s). The Ground Lease shall include standard mortgagee protection provisions.

**Base Rent:** Base Rent shall be One Dollars and Zero Cents (\$1.00) due annually and payable in full starting on the Term Commencement Date. [confirm below market rent – leasehold will transfer prior to admission of investor to avoid income]

**Advance Rent:** Not Applicable.

**Extended Term Base Rent:** Not Applicable.

**Additional Rent:** Additional Rent shall include any and all other payments, charges and reimbursement obligations of Tenant to Landlord as allowed or permitted under the Lease terms herein.

**Construction Bonds:** Prior to starting any construction on the Premises, Tenant shall provide City with contractor performance and payment bonds, all to Landlord's reasonable satisfaction, in order to secure performance under the Lease.

**Insurance:** Tenant shall procure and maintain public liability and property damage insurance and other insurance required by the Landlord in a form, substance and amount approved by the Landlord. Tenant shall also procure and maintain workers' compensation insurance and all other insurance required under applicable law, in a form and amount approved by the Landlord.

**Hazardous Materials:** Tenant shall represent, warrant and provide evidence satisfactory to the Landlord, as requested, that Hazardous Materials will not be and are not being stored or used on the Premises (except to the extent used in the ordinary course operating apartment complexes and used in accordance with all applicable laws) and that the Premises and Use are in compliance with all environmental laws, ordinance and regulations. Hazardous

Materials Disclosure Certification is attached at Exhibit XXX.  
Additional requirements may be set out in the Lease.

**Tenant's Share of Expenses:** Tenant is responsible for 100% of the operating expenses, taxes, and utility expenses associated with the Use of the Premises, for the duration of the Lease Term. Additional requirements may be set out in the Lease.

**Permitted Uses:** Subject to compliance with all other terms and conditions of the Lease, the operation of 40 units of Affordable Housing, including nineteen (19) intended for individuals with Intellectual and Development Disabilities (the "Permitted Uses"), which complies fully with all terms and conditions of this Lease, and for which all land use and other entitlements, approvals, licenses and permits have been granted by local, state and federal governmental agencies, departments and entities.

**Parking Spaces:** 61 parking spaces for residents and staff of the property or as required under the land use and entitlement approvals.

**Landlord:** City of Cupertino, a Political Subdivision of the State of California. Also referred to herein as "City".

**Landlord's Notice Address:** Cupertino City Hall,  
Office Community Development  
Attn: Gian Martire, Senior Planner  
10300 Torre Avenue, Cupertino, California 95014

**Landlord's Address For Rent:**  
Cupertino City Hall,  
Office Community Development  
Attn: Gian Martire, Senior Planner  
10300 Torre Avenue, Cupertino, California 95014

**Sponsor's Notice Addresses:**  
Charities Housing  
Sobrato Center for Nonprofits – San Jose  
1400 Parkmoor Avenue, Suite 190  
San Jose, CA 95126

With copy to:

Lauren B. Fechter  
Gubb & Barshay LLP  
235 Montgomery Street, Suite 1110  
San Francisco, CA 94104  
Ph: 415-781-6600, ext. 5  
[lfechter@gubbandbarshay.com](mailto:lfechter@gubbandbarshay.com)

Broker: None for Tenant/Sponsor. None for Landlord.

Exhibits: Exhibit A; Legal Description  
Exhibit B: Regulatory Agreement.  
Exhibit C: Hazardous Materials Disclosure Certificate

Addenda: None