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Cupertino, CA 95014
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Government Code Section 27383

**AFFORDABLE HOUSING REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(Greenwood Court)**

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of July 1, 2017 (the "Effective Date"), by and between the City of Cupertino, a municipal corporation (the "City"), and West Valley Community Services of Santa Clara County, Inc. (the "Developer") (each individually a "Party" and together the "Parties"), with reference to the following facts.

RECITALS

A. Capitalized terms used but not defined in these recitals are as defined in Article 1 of this Agreement or in the Contract.

B. The Developer owns certain real property located at 10311 and 10321 Greenwood Court in the City of Cupertino, County of Santa Clara, as more particularly described in Exhibit A (the "Property"). The Developer intends to rehabilitate four (4) existing transitional housing units and convert such units to City below market rate units (the "Affordable Units"), which shall be affordable to Very Low and Extremely Low Income Households. The renovated Affordable Units on the Property shall be referred to herein as the "Development".

C. The City and Developer have entered into a Below Market Rate Affordable Housing Fund City/Non-Profit Contract on July 1, 2016, as amended by the Parties on July 1, 2017 (the "Contract"), pursuant to which the City has provided a grant to Developer in the amount of Three Hundred Twenty Thousand Dollars and No Cents (\$320,000.00) (the "Grant") for rehabilitation of the Development. The City has agreed to make the Grant to Developer on the condition that the Development be maintained and operated in accordance with restrictions concerning affordability, operation, and maintenance of the Development, as specified in this Agreement and the Contract. Restrictions included in the Contract are incorporated herein by reference and made a part of this Agreement.

D. The Grant is being made to the Developer to help achieve financial stability for the Development and to increase the supply of affordable rental housing in the City. In consideration for the Grant, Developer has agreed to observe all the terms and conditions set forth below. This Agreement will ensure the Development's continuing affordability.

E. In order to ensure that the entire Development will be used and operated in accordance with these conditions and restrictions, the City and Developer wish to enter into this Agreement.

THEREFORE, the City and Developer hereby agree as follows.

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

ARTICLE 1 DEFINITIONS

1.1 Definitions.

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" means the actual number of persons in the applicable household.

(b) "Affordable Units" are defined in Recital B.

(c) "Agreement" means this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants.

(d) "Area Median Income" means the area median income for Santa Clara County as published and periodically updated by HUD, adjusted for Actual Household Size.

(e) "City" is defined in the first paragraph of this Agreement.

(f) "Contract" is defined in Recital D.

(g) "Default" is defined in Section 6.7(a).

(h) "Developer" is defined in the first paragraph of this Agreement.

(i) "Development" is defined in Recital B.

(j) "Director" is the Community Development Director or successor position.

(k) "Effective Date" is defined in the first paragraph of this Agreement.

(l) "Eligible Household" is a household which has been determined to be eligible to rent an Affordable Unit in compliance with this Agreement.

(m) "Extremely Low Income Household" means a household with an annual Household Income which does not exceed thirty percent (30%) of Area Median Income, adjusted for Actual Household Size.

(n) "Extremely Low Income Household Rent" means the maximum rent published by HUD for an Extremely Low Income Household in Santa Clara County for the applicable bedroom size.

(o) "Extremely Low Income Units" means the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Extremely Low Income Households.

(p) "Grant" is defined in Recital D.

(q) "Household Income" is the annual income of a Tenant determined as required by HUD.

(r) "HUD" means the United States Department of Housing and Urban Development.

(s) "Indemnitees" are defined in Section 6.6.

(t) "Low Income Household" means a household with an annual Household Income which does not exceed eighty percent (80%) of Area Median Income, adjusted for Actual Household Size.

(u) "Low Income Household Rent" means the maximum rent published by HUD for a Low Income Household in Santa Clara County for the applicable bedroom size.

(v) "Party" or "Parties" is defined in the first paragraph of this Agreement.

(w) "Property" is defined in Recital B.

(x) "Management Agent" is defined in Section 5.2.

(y) "Rent" means the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Developer which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees, or charges for use of the land or associated facilities and assessed by a public or private entity other than Developer, and paid by the Tenant.

(z) "Tenant" means a household legally occupying a Unit pursuant to a valid Tenant Lease with Developer.

(aa) "Tenant Lease" is defined in Section 2.6.

(bb) "Term" means the term of this Agreement, which commences on the Effective Date of this Agreement and continues until the ninety-ninth (99th) anniversary of the Effective Date.

(cc) "Unit" means one of the four (4) rental housing units constructed on the Property.

(dd) "Very Low Income Household" means a household with an annual Household Income which does not exceed fifty percent (50%) of Area Median Income, adjusted for Actual Household Size.

(ee) "Very Low Income Household Rent" means the maximum rent published by HUD for a Very Low Income Household in Santa Clara County for the applicable bedroom size.

(ff) "Very Low Income Units" means the Units which, pursuant to Section 2.1(b) below, are required to be occupied by Very Low Income Households.

1.2 Exhibits

The following exhibit is attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A: Legal Description of the Property

ARTICLE 2
AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements.

The Affordable Units shall be rented to and occupied by, or, if vacant, available for occupancy by Extremely Low Income Households and Very Low Income Households as follows:

(a) Extremely Low Income Units. Developer shall rent two (2) Units to, and shall ensure that these Units are occupied by, or, if vacant, available for occupancy by, Extremely Low Income Households.

(b) Very Low Income Units. Developer shall rent two (2) Units to, and shall ensure that these Units are occupied by, or, if vacant, available for occupancy by, Very Low Income Households.

(c) Access to Facilities. All Tenants must have equal access to and enjoyment of all common facilities in the Development.

(d) Bedroom Size. The Affordable Units shall be three (3)-bedroom units.

2.2 Allowable Rent.

(a) Extremely Low Income Household Rent. Subject to the provisions of Section 2.3 below, Rent paid by Tenants of all Extremely Low Income Units during the Term shall not exceed the Extremely Low Income Household Rent for the applicable bedroom size.

(b) Very Low Income Household Rent. Subject to the provisions of Section 2.3 below, Rent paid by Tenants of all Very Low Income Units during the Term shall not exceed the Very Low Income Household Rent for the applicable bedroom size.

(c) City Approval of Rents. The initial Rents for all Affordable Units shall be approved by the City prior to occupancy. The City shall review all proposed Rent increases to determine whether the proposed increases are consistent with the provisions of this Agreement. Developer shall certify to the City that Developer is not charging any fee other than Rent to Tenants of the Affordable Units for all of the components of Rent defined in Section 1.1 above.

(d) In the event that income determinations are no longer published by HUD, or are not updated for a period of at least eighteen (18) months, the City shall provide Developer with other income and Rent determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD.

2.3 Increased Income of Tenants in Affordable Units.

(a) Increased Income Above Extremely Low Income but Below Very Low Income Household Limit. If, upon annual recertification of the Household Income of a Tenant of an Affordable Unit, Developer determines that the Tenant no longer qualifies as an Extremely

Low Income Household, but does qualify as a Very Low Income Household, the Tenant may continue to occupy the Unit and, upon sixty (60) days written notice to Tenant, Developer may increase the Tenant's rent to the Very Low Income Household Rent. Developer shall then rent the next available Unit to an Extremely Low Income Household, at a Rent not exceeding the maximum Rent specified in Section 2.2(a), to comply with the requirements of Section 2.1(a) above. Upon renting the next available Unit in accordance with Section 2.1(a), the Unit with the over-income Tenant will be considered a Very Low Income Unit.

(b) Increased Income Above Very Low Income Household Limit but Below Low Income Limit. If, upon annual recertification of the Household Income of a Tenant of an Affordable Unit, Developer determines that the Tenant no longer qualifies as an Extremely Low Income Household or a Very Low Income Household, but does qualify as a Low Income Household, the Tenant may continue to occupy the Unit and, upon sixty (60) days written notice to Tenant, Developer may increase the Tenant's rent to Low Income Household Rent. If the Tenant is occupying an Extremely Low Income Unit, Developer shall then rent the next available Unit to an Extremely Low Income Household at a Rent not exceeding the maximum Rent specified in Section 2.2(a), to comply with the requirements of Section 2.1(a) above. Upon renting the next available Unit in accordance with Section 2.1(a), the Unit with the over-income Tenant will be considered a Very Low Income Unit. However, if the Tenant is occupying a Very Low Income Unit, then the Unit shall continue to be considered a Very Low Income Unit.

(c) Non-Qualifying Household. If, upon recertification of a Tenant's Household Income, Developer determines that a Tenant no longer qualifies as an Extremely Low Income Household, a Very Low Income Household, or a Low Income Household, then the Tenant shall be given written notice that Tenant shall vacate the Affordable Unit three (3) months from the date of the notice or upon expiration of the Tenant's lease, whichever is later. A three (3) month extension may be granted by the Director in cases of extreme hardship.

2.4 Termination of Occupancy.

Upon termination of occupancy of a Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Extremely Low Income Household or Very Low Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit (e.g., Extremely Low Income Unit or Very Low Income Unit) shall be re-determined. In any event, Developer shall maintain the occupancy requirements set forth in Section 2.1 above, except as may be modified by Section 2.3.

2.5 Agreement to Limitation on Rents.

The Development has received direct financial assistance from the City in the form of the Grant. Civil Code Sections 1954.52(b) and 1954.53(a)(2) of the Costa-Hawkins Act provide that, where a developer has received such assistance, certain provisions of the Costa-Hawkins Act do not apply if a developer has so agreed by contract. The Developer hereby agrees to limit Rents as provided in this Agreement in consideration of the Developer's receipt of direct financial assistance and further agrees that any limitations on Rents imposed on the Affordable Units are in conformance with the Costa-Hawkins Act. The Developer further warrants and covenants that the terms of this Agreement are fully enforceable.

2.6 Lease Provisions.

The Developer shall use a form of Tenant lease (the "Tenant Lease") approved by the City for the Affordable Units. The Tenant Lease shall, among other matters:

(a) provide for termination of the lease for: (1) failure to provide any information required under this Agreement or reasonably requested by Developer to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy of the Affordable Units in accordance with the standards set forth in this Agreement, (2) failure to qualify as an Extremely Low Income Household or a Very Low Income Household, as the case may be, as a result of any material misrepresentation made by such Tenant with respect to the Household Income computation or certification; (3) an increase in Tenant's Household Income above the qualifying income for Low Income Households; or (4) good cause, including violation of the terms and conditions of the Tenant Lease, violations of applicable federal, state, or local law, or other good cause;

(b) be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of Developer and the Tenant, however the Rent may not be raised more often than once every twelve (12) months after such initial year. Developer will provide each Tenant with at least sixty (60) days' written notice of any increase in Rent applicable to such Tenant, and with such further notice as may be required by Section 2.3 as applicable;

(c) prohibit subleasing of the Affordable Unit or any portion of the Affordable Unit or any spaces reserved for the use of the Tenant, incorporate nondiscrimination provisions, and include the Tenant's obligation to inform the Developer of any need for maintenance or repair;

(d) include, at Developer's option, the obligation for Tenant to provide a security deposit not exceeding two months' rent; and

(e) affirm City's authority to conduct reasonable inspections of the Units and otherwise conform to the City's Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units.

2.7 Security Deposits

Any security deposits collected by Developer or Developer's agent shall be kept separate and apart from all other funds in a trust account with a depository insured by the Federal Deposit Insurance Corporation or other comparable federal deposit insurance program and shall be held and disbursed in accordance with California law. The balance in the trust account shall at all times equal or exceed the aggregate of all outstanding obligations, plus accrued interest thereon.

ARTICLE 3
INCOME CERTIFICATION AND REPORTING

3.1 Marketing and Income Certification.

(a) Waiting List and Application for Affordable Units; Section 8. City or assignee shall maintain a waiting list for all Affordable Units. When a vacancy occurs in an Affordable Unit, City or assignee shall refer Eligible Households to Developer. The Developer will review applications from Eligible Households, including review of applications from Eligible Households who are recipients of federal certificates for rent subsidies under Section 8 of the United States Housing Act or any successor provision. The Developer may not apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Affordable Units by Section 8 certificate holders.

(b) Income Certification. City or assignee will review the Household Income of prospective tenants of the Affordable Units and certify Eligible Households. City or assignee will certify Tenant Household Incomes on an annual basis to determine if the Tenant remains an Eligible Household and will report the results of the annual certification to the Developer. If the Tenant's Household Income increases from Extremely Low Income to Very Low Income or Low Income; from Very Low Income to Low Income; or increases above Low Income, Developer shall take the actions described in Section 2.3 above.

3.2 Annual Report to City.

(a) Developer shall provide any information reasonably requested by the City in connection with the Development. In particular, Developer shall provide the City with an annual report verifying compliance with the terms of this Agreement and certified as correct by the Developer no later than April 1 of each calendar year following the completion of the rehabilitation of the Development, hardcopies and PDF copies of the following documents:

(1) an occupancy report for all Affordable Units including: (a) Household Income for all Tenants of Affordable Units at the time of initial occupancy and at recertification; (b) number of persons in each Affordable Unit and the Affordable Unit size; (c) amount of Rent charged and whether these Rents include utilities; and (d) the date tenancy commenced for each Affordable Unit;

(2) a management report detailing the activities of the management agent;

(3) A list of any substantial physical defects in the Units, including a description of any major repair or maintenance work undertaken or needed in the previous year and measures taken to maintain the Units in a safe and sanitary condition in accordance with applicable codes;

- (4) the operating reserve balance;
- (5) the replacement reserve balance;
- (6) the proposed annual operating budget for the subsequent fiscal year; and
- (7) the proposed annual replacement budget for the subsequent fiscal year.

(b) Within fifteen (15) days after receipt of a written request, Developer shall provide any other information or completed forms requested by the City to ensure compliance with this Agreement.

(c) Substitution of Monitoring and Compliance Reports Prepared for Other Financing Programs. If similar reports on some or all of the Affordable Units are required for regulatory compliance with other financing programs, those reports may be deemed satisfactory for the purpose of this Section by the City, with respect to the portion of the requirements of this Section covered by such reports, provided that copies are provided on an annual basis to the City with an owner certification addressed to the City certifying that Developer has complied with this Agreement.

3.3 Additional Information.

Developer shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of Developer which pertain to the Units.

3.4 Tenant Records.

(a) Developer shall maintain complete, accurate and current records pertaining to the Units, and shall permit any duly authorized representative of the City to inspect the records, including but not limited to records pertaining to household size of Tenants and Rent charged Tenants, upon reasonable prior notice during normal business hours. All Tenant lists, applications and waiting lists relating to the Units shall at all times be kept separate and identifiable from any other business of Developer and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. Developer shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

(b) The City shall notify Developer of any records it deems insufficient. Developer shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Developer shall begin to correct the deficiency within fifteen (15) days and correct the deficiency within thirty (30) days, or as otherwise agreed by City if a longer time period is reasonably required.

3.5 On-site Inspection.

The City shall have the right to perform on-site inspections of the Development, including the Affordable Units, as is reasonably required to ensure compliance with this Agreement, but in any case at least once per year. Developer agrees to cooperate in such inspection(s). If City desires to inspect the interior of the Affordable Units, City shall give Developer sufficient notice to allow Developer to give seventy-two (72) hours' notice to Tenants.

**ARTICLE 4
OPERATION OF THE DEVELOPMENT**

4.1 Residential Use.

The Property and the Units shall be used only for residential purposes consistent with this Agreement, and the Units shall be operated and maintained as residences for the Term of this Agreement. No part of the Units shall be operated as transient housing in which the term of occupancy is less than thirty (30) days.

4.2 Compliance with Applicable Laws.

The Development shall be operated at all times in compliance with all applicable Federal, State and local laws and regulations, including the City's policies concerning nondiscrimination, and including, but not limited to, the following laws: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 *et seq.*); and California Labor Code sections 1101 and 1102. Developer shall develop and implement verification procedures to ensure compliance with the requirements of this Section. The Developer shall provide the City with a copy of its written verification procedures. The Developer agrees to indemnify, protect, hold harmless, and defend (by counsel reasonably satisfactory to the City) Indemnitees (as defined in Section 6.6) from all claims arising out of the Developer's failure to comply with applicable legal requirements imposed by this subsection. The indemnity provisions of this subsection shall survive expiration of the Term or other termination of this Agreement.

4.3 Operation Consistent with City Guidelines.

Developer will operate the Development in conformance with the City's Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units.

4.4 Compliance with Program Requirements.

Developer actions with respect to the Property shall at all times be in full conformity with all regulatory requirements imposed on the Development. In the event of any conflict among the regulatory requirements, the most restrictive requirements shall apply.

4.5 Taxes and Assessments.

Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that the Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

**ARTICLE 5
PROPERTY MANAGEMENT AND MAINTENANCE**

5.1 Management Responsibilities.

Developer is responsible for all management functions with respect to the Units, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Units. Except in situations where Developer is also responsible for property maintenance, Developer shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder. The below provisions concerning Developer's responsibilities for property management and City's authorities and remedies shall apply equally to Developer if Developer assumes responsibility for property management, as approved by City.

5.2 Management.

The Development shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). Developer shall submit for the City's approval the identity of any proposed Management Agent. The City hereby pre-approves West Valley Community Services of Santa Clara County, Inc. as the initial Management Agent. Developer shall also submit such additional information about the background, experience, and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent

set forth above, the City shall approve the proposed Management Agent by notifying Developer in writing. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

5.3 Performance Review.

The City reserves the right to conduct an annual (or more frequently, if deemed necessary by the City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. Developer shall cooperate with the City in such reviews.

5.4 Replacement of Management Agent.

(a) If, as a result of a periodic review, the City determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Developer of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Developer of such written notice, City staff and Developer shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

(b) If, after such meeting, City staff recommends in writing the replacement of the Management Agent, Developer shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above.

(c) Any contract for the operation or management of the Development entered into by Developer shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute Default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.7 below.

5.5 Property Maintenance.

(a) Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

(1) Landscaping. Developer agrees to have landscape maintenance performed as needed. Developer agrees to adequately water the landscaping on the Property.

No improperly maintained landscaping on the Property shall be visible from public streets and/or rights of way.

(2) Yard Area. No yard areas on the Property shall be left unmaintained, including:

(i) broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week;

(ii) packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and

(iii) vehicles parked or stored in other than approved parking areas.

(3) Building. No buildings located on the Property may be left in an unmaintained condition so that any of the following exist:

(i) violations of state law, uniform codes, or City ordinances;

(ii) conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance;

(iii) broken windows;

(iv) graffiti (must be removed within 72 hours); and

(v) conditions constituting hazards and/or inviting trespassers, or malicious mischief.

(4) Sidewalks. Developer shall maintain, repair, and replace as necessary all public sidewalks adjacent to the Development.

(b) The City places prime importance on quality maintenance to protect its investment and to ensure that all City-assisted affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Units will be acceptable to the City assuming Developer agrees to provide all necessary improvements to assure the Units are maintained in good condition. Developer shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

(c) In the event that Developer breaches any of the covenants contained in this Section and such Default continues for a period of ten (10) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the Default. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect,

maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, which amount shall be promptly paid by Developer to the City upon demand.

5.6 Safety Conditions.

(a) Developer acknowledges that the City places a prime importance on the security of City assisted projects and the safety of the residents and surrounding community. Developer agrees to implement and maintain throughout the Term the following security measures in the Development:

(1) to the extent feasible employ defensible space design principles and crime prevention measures in the operation of the Development including but not limited to maintaining adequate lighting in parking areas and pathways;

(2) use its best efforts to work with the Santa Clara County Sheriff's Department to implement and operate an effective neighborhood watch program; and

(3) provide added security including dead-bolt locks for every entry door.

(b) The City shall have the right to enter on the Property and/or contact the Santa Clara County Sheriff's Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Tenants and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition.

**ARTICLE 6
MISCELLANEOUS**

6.1 Nondiscrimination.

(a) Developer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, family status, source of income, ancestry or national origin, HIV/AIDS, or any other arbitrary basis in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

(b) Developer shall include the provisions contained in this Section in all contracts and subcontracts related to the Development.

(c) The requirements in this Section shall survive the expiration of the Term.

6.2 Term.

The provisions of this Agreement will apply to the Property for the entire Term. This Agreement shall bind any successor, heir or assign of Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City makes the Grant on the condition, and in consideration of, this provision, and would not do so otherwise.

6.3 Notice of Expiration of Term.

At least one (1) year prior to the expiration of the Term, Developer shall provide by first-class mail, postage prepaid, a notice to all Tenants in Units containing: (a) the anticipated date of the expiration of the Term; (b) any anticipated Rent increase upon the expiration of the Term; (c) a statement that a copy of such notice will be sent to the City; and (d) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Developer shall file a copy of the above-described notice with the City Manager. In addition, Developer shall comply with all requirements set forth in California Government Code Sections 65863.10 and 65863.11 or successor provisions and all other notification required by any state, federal, or local law.

6.4 Effect of Other Financing Programs.

The Development may be subject to the terms of other governmental subsidy programs. This Agreement and the agreements entered into by Developer pursuant to these subsidy programs independently regulate Affordable Units in the Development. If any provision of another regulatory agreement is found in conflict or in contradiction with the terms of this Agreement in relation to the Affordable Units, the most restrictive requirement, providing the greatest affordability to the most Tenants for the longest term, shall apply to the Affordable Units.

6.5 Covenants Running with the Land.

The City and Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall apply to and bind Developer and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden such portions of the Property until the end of the Term. Until all or portions of the Property are expressly released from the burdens of this Agreement, each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument. In the event of foreclosure or transfer by deed-in-lieu of all or any portion of the Property prior to completion and sale of all of the Affordable Units, title to all or any portion of the Property shall be taken subject to this Agreement.

6.6 Indemnification.

(a) To the full extent permitted by law, Developer shall indemnify, defend at its own expense, and hold the City and its elected officials, officers, employees and agents in their official capacity (collectively "Indemnitees") harmless against any and all claims, suits, actions, losses, and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the City or Indemnitees. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, provided that nothing shall require either Party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product privilege.

(b) The provisions of this Section shall survive the expiration of the Term and any release of part or all of the Property from the burdens of this Agreement.

6.7 Default.

(a) Failure by the Developer to perform any obligation under this Agreement shall constitute a "Default" by the Developer under this Agreement.

(b) The City shall give written notice to the Developer specifying the nature of the violation giving rise to the Default. If the violation is not corrected to the satisfaction of City within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as the City reasonably determines is necessary to correct the violation, the City may declare a Default under this Agreement by written notice to the Developer.

(c) Remedies. The occurrence of any Default following the expiration of all applicable notice and cure periods will give the City the right to proceed with any and all remedies set forth in this Agreement, and any and all remedies available to it, including but not limited to the following:

(1) instituting against the Developer, or other parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;

(2) where one or more persons have received financial benefit as a result of violation of this Agreement, the City may assess, and institute legal action to recover as necessary, a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of the benefit received;

(3) any other means authorized under the City of Cupertino Municipal Code or any other federal or state statute;

(4) any other remedy provided under the Contract.

(d) Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement or the Cupertino Municipal Code is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of this Agreement or by any statute or ordinance or otherwise against Developer and any other person.

6.8 Entire Understanding of the Parties.

This Agreement constitutes the entire Agreement between the Parties and no modification shall be binding unless reduced to writing and signed by the Parties.

6.9 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

6.10 Each Party's Role in Drafting the Agreement.

Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

6.11 Recording and Filing.

The City and Developer shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Santa Clara.

6.12 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of California. Venue shall be the County of Santa Clara.

6.13 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

6.14 Waiver of Requirements.

No waiver of the requirements of this Agreement shall occur unless expressly waived by the City in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or Default of Developer or to pursue any remedy permitted under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Developer shall

not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

6.15 Amendments.

This Agreement may be amended only by a written instrument executed by all the Parties or their successors in title, and duly recorded in the real property records of the County of Santa Clara.

6.16 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate Party as follows:

Developer: West Valley Community Services of Santa Clara County, Inc.
10104 Vista Drive
Cupertino, CA 95014
Attention: Executive Director

City: City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attention: Senior Housing Planner

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

6.17 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

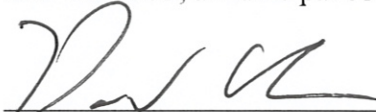
6.18 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

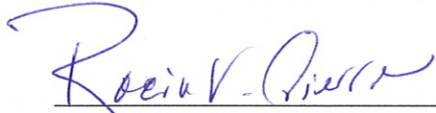
IN WITNESS WHEREOF, the City and Developer have executed this Agreement by duly authorized representatives, all on the date first written above.

CITY:

CITY OF CUPERTINO, a municipal corporation

By: 
David Brandt, City Manager

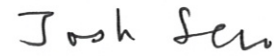
APPROVED AS TO FORM BY:


Randolph Hom, City Attorney

Date: 10-30-17

DEVELOPER:

WEST VALLEY COMMUNITY SERVICES OF
SANTA CLARA COUNTY, INC., a California
nonprofit public benefit corporation

By: 
Josh Selo
Executive Director



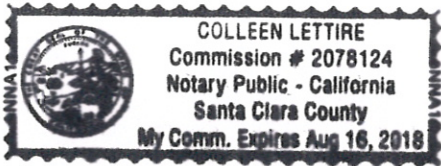
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On October 27, 2017, before me, Colleen Lettore, Notary Public, personally appeared David Brandt, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Colleen Lettore

Name: Colleen Lettore
Notary Public

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

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On 04 Santa Clara, before me, JULIA KINST, Notary Public, personally appeared Josh Selo, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Name: Julia Kinst
JULIA KINST
Notary Public

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

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On November 3, 2017, before me, JULIA KINST, Notary Public, personally appeared Josh Selo, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Name: Julia Kinst
JULIA KINST
Notary Public

EXHIBIT A
LEGAL DESCRIPTION

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

All the real property situated in the City of Cupertino, County of Santa, State of California, described as:

Lot 28, Tract No. 3277, filed December 7, 1962 in Book 155 of Maps, at page 14, Santa Clara County Records.