RESOLUTION NO. 26-018

A RESOLUTION OF THE CUPERTINO CITY COUNCIL APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF CUPERTINO, A CALIFORNIA MUNICIPAL CORPORATION, AND MARY AVENUE, L.P., A CALIFORNIA LIMITED PARTNERSHIP IN CONNECTION CERTAIN CITY-OWNED REAL PROPERTY LOCATED AT MARY AVENUE, IN THE CITY OF CUPERTINO (APN: 326-27-053)

WHEREAS, the City of Cupertino ("City") owns, administers and manages various properties throughout the City for public agency purposes, in accordance with state law and local policies; and

WHEREAS, Assessor Parcel No. 326-27-053 ("Property") is located within the Mary Avenue Right-of-Way and is owned by the City; and

WHEREAS, the City is considering the transfer of the Property to Mary Avenue, L.P., a California limited partnership company ("Developer"), pursuant to a Disposition and Development Agreement ("DDA") with the Developer for the construction of a 40-unit below market rate affordable housing development on a housing element site, of which 19-units are dedicated to the Intellectually Developmentally Disabled and 21 units reserved for extremely low, very low, and low income residents ("Project") as further described in the DDA and which will be restricted for affordable housing for 99 years as reflected in a regulatory agreement to be recorded against the Project concurrently at the closing of the sale of the Property to the Developer ("Regulatory Agreement"); and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby find, determine and resolve as follows:

1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

2. Below Fair Market Value. Pursuant to Government Code Section 37364, the City Council finds that the Property can be used to provide housing affordable to persons and families of low, very low, and extremely low income and that such use is in the best interests of the City, and, therefore, the City is authorized to

dispose of the Property to the Developer pursuant to the DDA (as specified in Section 4 below) at less than fair market value under terms and conditions the City deems appropriate which includes, among other things, that the Property will be restricted by a regulatory agreement restricting the Property for affordable housing uses for 99 years to be recorded at the closing under the DDA.

3. CEQA. The City Council has reviewed and considered the environmental determination adopted in connection with the Architectural Site Approval for the Project and finds that approval of the Disposition and Development Agreement is within the scope of that determination. The Project is categorically exempt from environmental review pursuant to CEQA Guidelines section 15332 (Class 32, Infill Development Projects).

4. Disposition and Development Agreement. The City Council hereby finds and determines that the Disposition and Development Agreement ("DDA") serves a valid public purpose, including the development of affordable housing, and approves the DDA substantially in the form attached hereto as **Exhibit A** and incorporated herein by this reference, subject to changes deemed necessary by the City Manager and as to legal form by the City Attorney.

5. Authorization. The City Manager is hereby authorized to take such actions, perform such deeds, and execute, acknowledge and deliver such instruments and documents as they deem necessary to effectuate the transactions contemplated under the DDA.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 3rd day of February, 2026 by the following vote:

Members of the City Council

AYES: Moore, Fruen, Mohan
NOES: Wang
ABSENT: None
ABSTAIN: Chao

SIGNED: Kitty Moore, Mayor City of Cupertino	 2/18/2026 Date
ATTEST: Lauren Sapudar, Acting City Clerk	 2/18/2026 Date

EXHIBIT A

Disposition and Development Agreement

[Attached]

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

CITY OF CUPERTINO,
a municipal corporation

AND

MARY AVENUE, L.P.,
a California Limited Partnership

Mary Avenue Villas Project

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of February 11, 2026 ("**Agreement Date**") by and between City OF CUPERTINO, a municipal corporation ("**City**"), and MARY AVENUE, L.P., a California Limited Partnership ("**Developer**"). The parties agree as follows:

I. (§100) PURPOSE OF THE AGREEMENT

As set forth in this Agreement, City intends to financially assist with the development of the Mary Avenue Villas legally described on Attachment 1 (APN 326-27-053) ("**Site**"). The development will consist of two 2-story buildings comprising of a 40-unit residential apartment complex with 39 affordable units + 1 manager's unit together with 20 on-site parking spaces ("**Project**").

As material inducement and consideration for City to enter into this Agreement and provide the financial assistance for the Project, all of the residential units within the Project (other than the manager's unit), will be restricted for 99 years by a recorded covenant to be rented only to households of Low Income, Very Low Income and Extremely Low Income with 19 units of the affordable units also to include individuals or families with at least 1 member living with an intellectual or developmental disability.

This Project is in the best and vital interests of City, and the health, safety and welfare of the residents and taxpayers in City, and is in accord with the public purposes and provisions of applicable state and local laws. Construction of the Project will provide additional jobs and affordable housing in accordance with the purposes and goals of City and the requirements of the State of California with respect to affordable housing.

II. (§200) DEFINITIONS

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

A. (§ 201) Affiliate.

The term "**Affiliate**" shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Developer, which shall include, without limitation, each of the constituent partners of Developer's limited partnership. For this provision, "**control**" means (i) with respect to a person that is a corporation, the right to exercise, directly or indirectly, at least fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, and (ii) with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

B. (§ 202) Affordable Rent.

"**Affordable Rent**" shall have the meaning prescribed for that term in Health and Safety Code § 50053(b) and the regulations promulgated pursuant to or incorporated therein, including, without

limitation, any applicable regulations promulgated pursuant to Health and Safety Code §50093.

The Residential Units shall be allocated to the affordable income levels as follows:

Affordability Category	Studio Units	1-Bdrm Units	2-Bdrm Units	3-Bdrm Units	Total Units	IDD
Extremely Low Income	3	14			17	17
Very Low Income		4	11		15	2
Low Income		4	3		7	
Manager's Unit				1	1	
Total:	**3**	**22**	**14**	**1**	**40**	**19**

C. (§ 203) Agreement.

The term "**Agreement**" shall mean this entire Agreement, including all exhibits, which attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference. The Attachments included with this Agreement include the following:

Attachment No. 1	Legal Description of Site
Attachment No. 1-A	Site Map
Attachment No. 2	Scope of Development
	Exhibit A – Project Budget/Proforma
Attachment No. 3	Schedule of Performance
Attachment No. 4	Grant Deed
Attachment No. 5	City Note
Attachment No. 6	City Deed of Trust
Attachment No. 7	Regulatory Agreement
Attachment No. 8	Release of Construction Covenants

D. (§204) CDBG Grant.

The term "**CDBG Grant**" shall mean the sum of One Hundred Seventy-Four Thousand Five Hundred Sixty-Seven Dollars and Thirty-Seven Cents ($174,567.37) from City's Community Development Block Grant Fund for benefit of Project.

E. (§205) CDBG Grant Agreement.

The term "**CDBG Grant Agreement**" shall refer to that certain grant agreement evidencing the CDBG Grant in the sum of One Hundred Seventy-Four Thousand Five Hundred Sixty-Seven Dollars and Thirty-Seven Cents ($174,567.37). The CDBG Grant Agreement shall be in a form reasonably required by City.

F. (§206) City.

The term "**City**" shall mean City of Cupertino, California.

G. (§207) City Deed of Trust

The term "**City Deed of Trust**" shall mean the Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in the attached hereto as Attachment No. 6 which secures the City Note. The City Deed of Trust shall be recorded on the Site at the Closing and may be subordinate to the Senior Financing as provided in Section 515.

H. (§ 208) City Financial Assistance.

The term "**City Financial Assistance**" shall have the meaning ascribed in Section 402.3.

I. (§ 209) City Loan.

The term "**City Loan**" shall mean the hard money loan by City to Developer pursuant to the City Loan Documents.

J. (§210) City Loan Documents.

The term "**City Loan Documents**" shall mean the City Note and City Deed of Trust between City and Developer pursuant to which the funds shall be distributed to Developer for the payment of certain Project costs and expenses in accordance with Section 402.3(iii).

K. (§211) City Note.

The term "**City Note**" shall refer to that certain Promissory Note Secured by Deed of Trust in the principal amount of Three Million Dollars ($3,000,000). The City Note shall be in the form attached hereto as Attachment No. 5 and secured by the City Deed of Trust. The City Note shall be payable as a residual receipts loan.

L. (§ 212) City Title Policy.

The term "**City Title Policy**" shall mean the title insurance policy as defined in Section 406.4.

M. (§ 213) Closing.

The term **"Closing**" or "**Closing Date**" shall mean the closing of Escrow by the Escrow Agent recording the Grant Deed, the Regulatory Agreement, the City Deed of Trust and PLHA Trust Deed, in that order and the distribution funds and documents to the party entitled thereto as provided herein, which closing shall occur on or before the date established in the Schedule of Performance.

N. (§ 214) County.

The term **"County"** shall mean the County of Santa Clara.

O. (§ 215) Days.

The term "**days**" shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

P. (§ 216) Developer Fee.

The term "**Developer Fee**" means the fee paid by Developer in accordance with Section 402.2.

Q. (§ 217) Developer Title Policy.

The term "**Developer Title Policy**" shall mean the title insurance policy as defined in Section 406.4.

R. (§ 218) Effective Date.

The term "**Effective Date**" shall mean the date this Agreement is executed on behalf of City and Developer which shall occur after this Agreement has been approved by the City Council after a public meeting.

S. (§ 219) Enforced Delay.

The term "**Enforced Delay**" shall mean any delay described in Section 903 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 903.

T. (§ 220) Escrow.

The term "**Escrow**" shall mean the escrow established pursuant to this Agreement for the conveyance of title to the Site from City to Developer and the distribution of the City Loan, and CDBG Grant, pursuant to this Agreement.

U. (§ 221) Escrow Agent.

The term "**Escrow Agent**" shall mean Stewart Title Guranty Company, 3031 Tisch Way, Ste 230, San Jose, CA 95128, which shall act as the Escrow Agent for this transaction. The Escrow Agent contact shall be Sharon La Fountain, (408) 796-3710, sharon.lafountain@stewart.com.

V. (§ 222) Extremely Low Income Household.

The term "**Extremely Low Income Household**" shall mean a household whose income does not exceed thirty percent (30%) of the area median income for Santa Clara County, adjusted for applicable household size, as computed in accordance with Health & Safety Code Section 50106 and the regulations promulgated pursuant thereto or incorporated therein, including, without limitation, all regulations promulgated pursuant to Health and Safety Code Section 50093, or any successor statute.

W. (§ 223) General Partner.

The term "**General Partner**" shall mean Mary Avenue Charities LLC, a California limited liability company, which is wholly owned by Charities Housing Development Corporation of Santa Clara County, a California nonprofit public benefit corporation.

X. (§ 224) Grant Deed.

The term "**Grant Deed**" shall mean that Grant Deed in substantially the form attached hereto as Attachment No. 4 by which City as grantor will convey fee title of the Site to Developer as grantee

at the Closing.

Y. (§ 225) IDD.

The term "**IDD**" shall mean a person with an intellectual or developmental disability.

Z. (§ 226) Low Income Household.

The term "**Low Income Household**" shall mean a household whose income does not exceed sixty percent (60%) of the area median income for Santa Clara County, adjusted for applicable household size, as computed in accordance with Health & Safety Code Section 50079.5 and the regulations promulgated pursuant thereto or incorporated therein, including, without limitation, all regulations promulgated pursuant to Health and Safety Code Section 50093, or any successor statute.

AA. (§ 227) Manager's Unit.

The term "**Manager's unit**" shall mean the one (1) residential housing unit within the Project that shall be designated by Developer as a residence for a Qualified Manager. The Manager's Unit shall not be a restricted Residential Unit.

BB. (§228) Marketing Program.

The term "**Marketing Program**" shall mean a marketing plan for the Restricted Units, as defined in the Regulatory Agreement, which shall be prepared by Developer and approved by City.

CC. (§229) PLHA Loan.

The term "**PLHA Loan**" shall mean the sum of Nine Hundred Eight Thousand Six Hundred Eight-Three Dollars ($908,683) to be loaned to Developer from the City's Permanent Local Housing Allocation funds controlled and administered by the County.

DD. (§230) PLHA Deed of Trust

The term "**PLHA Deed of Trust**" shall mean the deed of trust which secures the PLHA Note, which shall be in a form reasonably approved by the City. If the Loan has been distributed to Developer prior to Closing pursuant to Section 402.3(v), the PLHA Note (as replaced pursuant to Section 402.3(v)), the Deed of Trust shall be recorded on the Site at the Closing and shall be subordinate to the Senior Financing and the City Deed of Trust as provided in Section 515.

EE. (§231) PLHA Guaranty.

The term "**PLHA Guaranty**" shall mean a guarantee of the PLHA Note to be executed by Developer's parent company to guarantee the PLHA Loan if the funds are distributed to Developer prior to Closing pursuant to Section 402.3(v). The PLHA Guaranty shall be terminated at the recordation of the PLHA Deed of Trust at the Closing.

FF. (§232) PLHA Note.

The term "**PLHA Note**" shall mean to a promissory note in the form required by City pursuant to Section 402.3(v) evidencing the PLHA Loan to be executed by Developer in the principal amount

equal to approximately Nine Hundred Eight Thousand Six Hundred Eight-Three Dollars ($908,683). If the funds are provided to Developer prior to the Closing, the PLHA Note shall be an unsecured promissory note in a form required by City. Upon the Closing, the PLHA Note shall be revised and replaced by a form required by City to be residual promissory note to be secured by the PLHA Deed of Trust.

GG. (§233) PLHA Loan Documents.

The Term "**PLHA Loan Documents**" shall mean the loan documents pursuant to which the PHLA Loan funds shall be distributed to Developer for the payment of certain Project costs and expenses in accordance with Section 402.3(v), and shall include the PLHA Note, the PLHA Guaranty if applicable, the PLHA Deed of Trust if applicable, and if required a loan agreement, in the form specified by the County and approved by the City.

HH. (§ 234) PLHA Title Policy.

The term "**PLHA Title Policy**" shall mean the title insurance policy as defined in Section 409.4.

II. (§ 235) Project.

The term "**Project**" shall mean all of the improvements required to be constructed by Developer on the Site as described in the Scope of Development attached hereto as Attachment No. 2.

JJ. (§ 236) Project Budget.

The term **"Project Budget"** shall mean the budget for the Project attached as Exhibit A to the Scope of Development.

KK. (§ 237) Purchase Price.

The term "**Purchase Price**" is One Dollar ($1.00). City has determined that disposition of the Site at less than fair market value is authorized under California Government Code §37364 and serves a valid public purpose in furtherance of the development of affordable housing. The conveyance of the Site shall be subject to the Regulatory Agreement.

LL. (§ 238) Qualified Lease.

The term "**Qualified Lease**" means a lease of a Residential Unit to a Qualified Tenant.

MM. (§ 239) Qualified Manager.

The term "**Qualified Manager**" shall mean the resident manager of the Project or any other member of the property management staff who is employed at the Project and whose residency in the Manager's Unit would not render the Manager's Unit ineligible for Tax Credits. The Qualified Manager shall reside in the Manager's Unit within the Project as designated by Developer. The Manager's Unit shall be restricted to occupancy by the Qualified Manager and his/her household.

NN. (§ 240) Qualified Tax Credit Investor

The term "**Qualified Tax Credit Investor**" shall mean a person or entity who (i) is an experienced investor in multifamily housing developments receiving low income housing tax credits issued by the State of California and/or the United States federal government ("**Tax Credits**"), and (ii) has obtained or is contractually obligated to obtain a limited partnership interest in Developer (or Developer's assignee) whereby it will receive ninety percent (90%) or more of the Tax Credits obtained in connection with the Project. City shall have the right to reasonable prior approval, which shall not be unreasonably withheld, of the limited partnership agreement and amendments thereto, but only with respect to the terms and conditions concerning timing and amounts of cash contributions toward Project development costs in return for an interest in the Project and the right to receive Project Tax Credits.

OO. (§ 241) Qualified Tenant.

The term "**Qualified Tenant**" shall mean those households seeking to rent a Residential Unit who satisfy all of the following requirements:

a. Upon execution of a Qualified Lease with Developer pursuant to this Agreement, each member of the household shall occupy the Residential Unit as its principal residence, and each member shall intend to thereafter continuously occupy such Residential Unit as its principal residence.

b. The household has been selected in accordance with the tenant selection criteria set forth in the Regulatory Agreement.

c. Upon execution of a Qualified Lease with Developer pursuant to this Agreement, the household is a Low, Very Low, or Extremely Low Income Household, and includes IDD residents in accordance with this Agreement.

PP. (§ 242) Regulatory Agreement.

The term "**Regulatory Agreement**" shall mean the Regulatory Agreement executed by Developer in favor of City in the form attached hereto as Attachment No. 7, to be recorded at Closing running with the land and providing for the proper maintenance of common facilities and improvements and the management and use of the Project, which also sets forth the limitations on occupancy, residency, and use of the Residential Units.

QQ. (§ 243) Release of Construction Covenants.

The term "**Release of Construction Covenants**" shall mean that document prepared in accordance with Section 513 of this Agreement, in the form attached as Attachment No. 8, which shall evidence that the construction and development of the improvements required by this Agreement have been satisfactorily completed.

RR. (§ 244) Repurchase Option.

The term "**Repurchase Option**" shall mean the right of City to repurchase the improved Site pursuant to the terms set forth in Section 806 which is also referenced in the Grant Deed.

SS. (§ 245) Residential Unit.

The term "**Residential Unit**" shall mean and refer to each of the thirty-nine (39) residential units in the Project, each of which is restricted to occupancy by this Agreement and the Regulatory Agreements to a Qualified Tenant. "**Residential Units**" shall mean and refer collectively to each and every Residential Unit located on the Site *except* the Manager's Unit. Notwithstanding anything to the contrary set forth herein, in the event of a conflict between the total number of restricted affordable units set forth herein and the total number of restricted affordable units which City may require by statute, Developer may elect to use the affordable unit restrictions and rents established by the rules and regulations of the California Tax Credit Allocation Committee.

TT. (§ 246) Santa Clara County Median Income

The term "**Santa Clara County Median Income**" shall be determined by reference to the regulations published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, or its successor.

UU. (§ 247) Senior Financing; Construction & Permanent Loans; Approved Public Agency Loans.

The term "**Senior Financing**" and terms related to it shall refer to the following: the loan(s) taken out by Developer from third party lenders to (i) fund the construction of the Project during the construction phase ("**Construction Loan**") and (ii) provide permanent financing after completion of the improvements replacing the Construction Loan ("**Permanent Loan**"). The term "**Approved Public Agency Loans**" shall mean any loans made to the Developer by a public agency (other than the City Loan and PLHA Loan) with the approval of the City. The City shall not unreasonably withhold its approval of any Approved Public Agency Loan provided that such loan satisfies the following conditions: (i) the proceeds of such loan shall be used solely for construction of the Project with no land draw permitted, (ii) the principal balance of such loan, together with the principal balance of all other Approved Public Agency Loans, does not exceed Two Million Five Hundred Thousand Dollars ($2,500,000), (iii) the principal balance of such loan, together with the principal balance of the Permanent Loan and all other Approved Public Agency Loans, does not exceed eighty percent (80%) of the value of the Project, and (iv) the terms of the documents evidencing and securing such loan, including, without limitation, the repayment terms, loan amount, and the disbursement provisions, have been approved by the City in its reasonable discretion. Subject to the conditions set forth in Section 515, the City Deed of Trust and the PLHA Deed of Trust shall be subordinated to the Senior Financing, as evidenced by such subordination agreements as may be required by the lender(s) for the Senior Financing. If required by the maker of an Approved Public Agency Loan, Senior Financing may also include such Approved Public Agency Loan, but only to the extent that such Approved Public Agency Loan satisfies the requirements of Section 515 below. Senior Financing shall also include such financing and instruments, if any, recorded upon the Site in conjunction with Tax Credits.

MJM

LC

CKM

VV. (§ ~~247~~ 247.1) Site.

The term "**Site**" shall mean the real property legally described on Attachment No. 1 (APN 326-27-053) which is owned by City and to be transferred to Developer pursuant to this Agreement to allow Developer to construct the Project.

WW. (§ 248) Site Map.

The Project shall be located upon the Site, which is within City, as shown in the "**Site Map**" attached hereto as Attachment No. 1-A.

XX. (§ 249) Tax Credits.

The term "**Tax Credits**" shall mean 4% or 9% Low Income Housing Tax Credits administered and allocated by TCAC, provided that 4% tax credits may be sought only if Developer demonstrates, to the reasonable satisfaction of City, that financing the Project with 4% Low Income Housing Tax Credits is financially feasible.

YY. (§ 250) TCAC.

The term "**TCAC**" shall mean the California Tax Credit Allocation Committee.

ZZ. (§ 251) Title.

The term "**Title**" shall mean the fee title to the Site which shall be conveyed to Developer pursuant to the Grant Deed.

AAA. (§ 252) Title Company.

The term "**Title Company**" shall mean Stewart Title Guaranty Company.

BBB. (§ 253) Very Low Income Household.

The term "**Very Low Income Household**" shall mean a household whose income does not exceed fifty percent (50%) of area median income for Santa Clara County, adjusted for applicable household size, as computed in accordance with Health & Safety Code Section 50105 and the regulations promulgated pursuant thereto or incorporated therein, including, without limitation, all regulations promulgated pursuant to Health and Safety Code Section 50093, or any successor statute.

III. (§300) PARTIES TO THE AGREEMENT

A. (§301) City.

1. City. The City of Cupertino is a public body, corporate and politic, exercising governmental functions and powers, organized and existing under the laws of the State of California. The office of City is located at 10300 Torre Avenue, Cupertino, CA 95014. The term "**City**," as used in this Agreement, shall also include any assignee of, or successor to, its rights, powers and responsibilities.

2. FIRPTA. City is not a "foreign person" within the parameters of the Foreign Investment in Real Property Tax Act ("**FIRPTA**") or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or City has complied and will comply with all the requirements under FIRPTA or any similar state statute.

3. No Conflict. To the best of City's knowledge, City's execution, delivery and performance of its obligations set forth in this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

4. No Litigation. As of the date of execution of this Agreement, to City's actual knowledge, there is no threatened or pending litigation against City challenging the validity of this Agreement or any of the actions proposed to be undertaken by City or Developer pursuant to this Agreement. "**Actual knowledge**," as used herein, shall not impose a duty of investigation, and shall be limited to the actual knowledge of City's employees and agents who have participated in the preparation of this Agreement and Developer's acquisition of the Site.

5. City's Participation as Lender Only. City's participation in the Project is solely as a lender and City is not participating in the Project as a developer or owner. Any actions by City which are not fully consistent with City's role as a lender are intended only to carry out routine government functions and impose constitutionally or statutorily authorized conditions acceptable to Developer. As such, the Project and City's participation through this Agreement are outside the scope of California Constitution Article XXXIV and its enabling legislation. Additionally, the Project shall be financed, in part, with Tax Credits. As such, the Project is exempted from the provisions of California Constitution Article XXXIV pursuant to Section 37001(h)(4) of the California Health and Safety Code.

B. (§302) Developer.

1. Identification. Developer is Mary Avenue, L.P., a California limited partnership, and any transferee permitted under this Agreement. The principal office of Developer for the purposes of this Agreement is located at 1400 Parkmoor Avenue, Suite 190, San Jose, CA 95126. Developer warrants and represents to City that Developer is and will be qualified to do business, is in good standing under the laws of the State of California, and has all requisite power to carry out Developer's business as now and whenever conducted and to enter into and perform Developer's obligations under this Agreement.

2. Successors and Assigns. Except as may be expressly provided herein below, all of the terms, covenants, and conditions of this Agreement shall be binding on, and shall inure to the benefit of, Developer and the permitted successors, and assigns of Developer as to the Site. Wherever the term "**Developer**" is used herein, such term shall include any permitted successors and assigns of Developer as herein provided.

3. Qualifications. The qualifications and identity of Developer are of particular concern to City, and it is because of such qualifications and identity that City has entered into this Agreement with Developer. City has considered the experience, financial capability, and product being marketed by Developer, the Site location and characteristics, the public costs of acquiring and developing the Site and return on investment, and the product mix necessary to produce a Project. Based upon these considerations, City has imposed those restrictions on transfer set forth in this Agreement.

C. (§303) Restrictions on Transfer.

1. Transfer Defined. As used in this Section, the term "**Transfer**" shall include any assignment, hypothecation, mortgage, pledge, conveyance, lease or encumbrance of this Agreement, the Site, or the improvements thereon, and conveyance of the Site from City to Developer or a limited partnership in which Developer (or its affiliate) is the administrative general partner, provided for in

this Agreement. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate, taking all transfers into account on a cumulative basis. In the event Developer or its successor is a corporation, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Developer. In the event that Developer is a limited or general partnership, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the limited or general partnership interest. In the event that Developer is a joint venture, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

2. Restrictions Prior to Completion. Prior to issuance of the Release of Construction Covenants, Developer shall not Transfer this Agreement or any of Developer's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, which shall not be unreasonably withheld, and if so purported to be Transferred, the same shall be null and void. In considering whether it will approve any Transfer by Developer of its interest in the Site before the issuance of the Release of Construction Covenants, which Transfer requires City approval, City shall consider factors such as (i) whether the completion or implementation of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Developer's obligations hereunder; and (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of a specific written agreement by City, prior to the issuance of a Release of Construction Covenants, no Transfer by Developer of all or any portion of its interest in the Site or this Agreement (including without limitation an assignment or transfer not requiring City approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement, in a form approved by City, assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following, all of which shall constitute "**Permitted Transfers**" and shall not require the prior consent of City:

a. Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 512, but Developer shall notify City in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

b. Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the acquisition of and improvements on the Site, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors.

c. The granting of easements or licenses to any appropriate governmental agency or utility or permits to facilitate the development and/or operation of the Site.

d. A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

e. A sale or Transfer to a California limited partnership in which Developer, or an Affiliate of Developer, is a general partner. The term "**Affiliate**" shall mean (i) any entity in which Developer directly or indirectly owns or controls fifty percent (50%) or more of the voting and/or membership interests or (ii) any entity in which the owner(s) of Developer directly or indirectly own or control fifty percent (50%) or more of the voting or membership interest.

f. A sale or Transfer of an interest in Developer, or the permitted successor thereof, to a Qualified Tax Credit Investor.

g. A sale or Transfer of an interest in a Qualified Tax Credit Investor.

h. The admission of a nonprofit corporation or a limited liability company wholly owned by a nonprofit corporation as a managing general partner of Developer, or the permitted successor thereof.

i. Transfer of the Project or limited partnership interests in Developer to a general partner, general partners or affiliates thereof of Developer, following the fifteen (15) year Tax Credit recapture period.

j. Admission of the Qualified Tax Credit Investor to Developer or the transfer of the Qualified Tax Credit Investor's interest in Developer to another party, or the redemption of the Qualified Tax Credit Investor's interest in Developer.

k. Qualified Leases to Qualified Tenants for the Residential Units.

4. Restrictions After Completion. Subsequent to the issuance of the Release of Construction Covenants, except as set forth in Section 303.3 above, Developer may not sell, Transfer, convey, hypothecate, assign or lease all or any portion of its interest in the Site without complying with any Transfer restrictions contained within the Grant Deed and the Regulatory Agreements, as applicable.

IV. (§400) ACQUISITION AND DISPOSITION OF THE SITE

A. (§401) Financing Milestones.

The parties acknowledge that Developer intends to finance the development, construction, and equipping costs for the Project with funds from a variety of sources, including (but not necessarily limited to) those funding sources identified on the Project Budget attached to the Scope of Development. Developer shall diligently apply for and pursue each funding source identified in the Project Budget at the earliest feasible opportunity, taking into account rules, requirements and scoring criteria applicable to each funding source. Not counting City Financial Assistance to be provided pursuant to this Agreement, Developer shall demonstrate, to City's reasonable satisfaction by the dates set forth in the Schedule of Performance, that Developer has secured a bona fide award,

commitment or reservation of Tax Credits (collectively, "**Housing Program Funds**") in an amount sufficient to provide for development of the Project in accordance with the Project Budget.

Developer shall submit up to two (2) applications to the TCAC for the Tax Credits as specified in the Schedule of Performance. In the event that Developer applies for and does not receive an allocation of 4% or 9% Tax Credits after two (2) allocation rounds, Developer and City shall meet and confer to determine whether Developer shall make another application if all parties agree that such application would be competitive under the then-applicable TCAC scoring criteria, provided that neither party shall have an obligation to continue this Agreement.

All funding sources for the Project shall be subject to City's prior approval, which approval shall not be unreasonably withheld. For purposes of calculating the dollar amount of committed Housing Program Funds in determining compliance with this Section 401, the gross amount of any reservation of state or federal low income housing tax credits shall be discounted by a reasonable factor (taking into account the then-prevailing pricing for tax credits awarded to similar projects in Santa Clara County) to approximate the amount the Qualified Tax Credit Investor would invest in the Project.

B. (§402) <u>Disposition of the Site and City Financial Assistance.</u>

No later than the date set forth in the Schedule of Performance, City shall convey the Site to Developer pursuant to the Grant Deed. Developer shall accept the conveyance of the Site upon the terms and conditions set forth in the Grant Deed, the Regulatory Agreement and this Agreement.

1. <u>Purpose of Disposition</u>. Developer agrees to develop the Site with forty (40) apartment units of which (i) thirty-nine (39) units will be Residential Units restricted for leasing to Qualified Tenants; and (ii) one (1) unit will be a Manager's unit for use by a Qualified Manager.

2. <u>Developer Fee</u>. Developer Fee shall be paid at such times and in such amounts as are provided in the partnership agreement for Developer; provided, however, that the total Developer Fee shall not exceed Two ~~Thousand~~ Million Eight Hundred Thousand Dollars ($2,800,000); and provided, further, that, in all events, the payment schedule shall be subject to the following: (i) not more than thirty percent (30%) of the Developer Fee shall be paid to Developer at the Closing, (ii) not more than fifty percent (50%) of the ~~of~~ Developer Fee (inclusive of all prior payments) shall be paid to Developer prior to achieving fifty percent (50%) completion of the Project, (iii) not more than eighty percent (80%) of the Developer Fee (inclusive of all prior payments) shall be paid to Developer prior to completion of the Project, (iv) not more than ninety-five percent (95%) of the ~~of~~ Developer Fee (inclusive of all prior payments) shall be paid to Developer prior to conversion of the Senior Financing from construction to permanent financing, and (v) not more than one hundred percent (100%) of the Developer Fee (inclusive of all prior payments) shall be paid to Developer prior to Developer's receipt of all IRS Forms 8609 for the Project. The deferral of Developer Fee in accordance with the foregoing schedule is material to City agreeing to provide the financial assistance specified in the following section. The deferred portion of Developer Fee shall be paid to Developer as a priority from the Net Cash Flow (as defined in the Regulatory Agreement) but only to the extent Developer Fee has not been paid to Developer from any other source. Developer shall promptly notify City if any portion of the Developer Fee is paid from another source.

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3. **City Financial Assistance.**

(i) Project Costs. The total estimated cost of the Project is Thirty-Nine Million Two Hundred Twenty-Eight Thousand Six Hundred Seventy-Nine Dollars ($39,228,679) as further described in the Project Budget. This estimate includes both the hard and soft costs of constructing the Project.

(ii) City Financial Assistance. City Financial Assistance is based on the Project Budget, which assumes a tax credit application as described in Section 401 of the Agreement. City shall provide financial assistance as follows ("**City Financial Assistance**"):

1. **Purchase Price.** Although the fair market value of the Site is Seven Million Two Hundred Thousand Dollars ($7,200,000), City is providing financial assistance by selling the Site to Developer for the Purchase Price of $1.

2. **City Loan.** City will provide a hard money loan of approximately Three Million Dollars ($3,000,000) from City's Below Market Rate Fund pursuant to the City Loan Documents. The City Loan shall be provided by the City to Developer as provided in Section 402.3(iii) below

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3. **CDBG Grant.** City will provide a grant of approximately One Hundred Seventy-Four Thousand Five Hundred Sixty-Seven and Thirty-Seven Cents ($174,567.37) from City's Community Development Block Grant Fund pursuant to the CDBG Grant Documents. The CDBG Grant shall be provided by the City as set forth in Section 402.3(iv) below.

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4. **PLHA Loan.** City will work with the County to provide a loan from the City's Permanent Local Housing funds in the amount of approximately Nine Hundred Eight Thousand Six Hundred Eighty-Three Dollars ($908,683) pursuant to the PLHA Loan Documents which shall be provided by the County to Developer as provided in Section 402.3(v) below.

5. **Waiver of Fees.** City will waive the Park Development Impact Fees in the amount of Two Million One Hundred and Sixty Thousand Dollars ($2,160,000).

(iii) City Loan. At Closing, City shall provide to Developer a loan in the amount of Three Million Dollars ($3,000,000) for certain construction costs pursuant to the City Loan Documents. The City Deed of Trust may be subordinated in priority to the Senior Financing pursuant to Section 515.

The City Note in the form of Attachment 5 is a residual receipts loan which shall accrue simple interest at three percent (3%) per annum and shall be due and payable in fifty-five (55) years. Repayment of the loan including all principal and accrued interest shall be made in annual payments from the City's share of fifty percent (50%) of the Net Cash Flow as set forth in the City Note.

Construction disbursement controls for the City Loan shall be provided through a third party construction disbursement control company licensed as a California escrow which entity shall be chosen by Developer subject to the approval of City ("**Disbursement Control Company**"). The disbursement controls will reasonably coordinate with requirements of the tax credit investors and may provide for direct payment of the approved construction costs. Alternatively, the City Loan may

be transferred to the primary construction lender pursuant to an intercreditor agreement to be disbursed by the construction lender in accordance with reasonable disbursement controls.

If applicable, the fees of the Disbursement Control Company shall be paid by Developer. The Disbursement Control Company and Developer shall enter into an agreement which shall provide for the Disbursement Control Company to provide construction loan disbursement services including obtaining mechanic lien releases, title disbursement title endorsements and other standard construction disbursement controls required under the City Loan Documents. The City Loan Documents shall provide for disbursement of the funds as follows:

(i) Developer may request a draw down on amounts necessary to pay approved predevelopment costs, which draw, if requested, shall be funded concurrently with the Close of Escrow, provided that Developer has submitted all required documentation in accordance with the City Loan Documents in connection with such draw; and

(ii) After construction has commenced, Developer may request a disbursement amount for reimbursement of costs incurred by Developer provided that Developer has submitted all required documentation less ten percent (10%) which holdback amount shall not be disbursed until Completion, and otherwise complied with other requirements set forth in the City Loan Documents.

The City funds shall be disbursed directly by City to the Disbursement Control Company upon being advised by the Disbursement Control Company that all the requirements for a disbursement have been satisfied in accordance with the City Loan Documents and the Disbursement Control Agreement.

The City Loan Documents, and the Disbursement Control Agreement (if applicable) shall be subject to the prior review and approval of City. No changes to any of same shall be made without the prior written consent of City.

(iv) CDBG Grant Funds. At Closing and in accordance with the CDBG Grant Agreement, City shall provide to General Partner the sum of One Hundred Seventy-Four Thousand Five Hundred Sixty-Seven Dollars and Thirty-Seven Cents ($174,567.37) for certain capital infrastructure costs as specified in the CDBG Grant Agreement. Developer shall provide evidence, satisfactory to the City, that the CDBG funds have been contributed as capital to the Developer partnership for the Project.

(v) PLHA Loan Funds. In accordance with the PLHA Loan Documents, City shall use reasonable efforts to cause the County to provide to Developer the sum of approximately Nine Hundred Eight Thousand Six Hundred Eighty-Three Dollars ($908,683) from the City's Permanent Local Housing Allocation funds held and administered by the County which shall be used for certain predevelopment costs related to the Project.

If it is agreed by the County and City to distribute the PLHA Loan funds prior to Closing, Developer shall execute an unsecured promissory note in a form required by the County and approved by City and Developer's parent company shall execute the PLHA Guaranty in a form required by County and approved by City. The unsecured promissory note shall be full recourse and, upon termination of this Agreement for any reason, ("**Commencement Date**") the principal amount shall commence to bear interest at the rate and upon the terms decided by County from the Commencement Date until paid. The PLHA Guaranty shall remain in effect until the PLHA Loan is repaid in full.

If the PLHA Loan funds have been distributed prior to Closing, then at the Closing, the PLHA Note shall be replaced by a new note evidencing the PLHA Loan with the terms providing (i) a term of fifty-five (55) years; (ii) bear interest at three percent (3%) per annum; (iii) be repaid as a residual receipts obligation with annual payments from the County's pro rata share of Fifty Percent (50%) of the Net Cash Flow (As defined in the City Note); (iv) be a non-recourse obligation; and (v) secured by the PLHA Deed of Trust to be recorded at Closing. At the Closing, the existing PLHA Note and the PLHA Guaranty shall be terminated and the original documents returned to the makers. An ALTA loan title policy in the amount of the PLHA Loan shall be issued insuring the PLHA Deed of Trust in the priority position on title as specified in this Agreement. The PLHA Loan may be subordinated to Senior Financing and the City Deed of Trust pursuant to Section 515.

C. (§403) Escrow.

Escrow shall be opened within the time specified in the Schedule of Performance. This Agreement shall constitute the joint Escrow instructions of City and Developer for the Site, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under these instructions. City and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional Escrow instructions consistent with the terms herein as shall be reasonably necessary. No provision of any additional Escrow instructions shall modify this document without specific written approval of the modifications by Developer and City.

D. (§404) Conditions to Close of Escrow for Acquisition by Developer.

1. Developer's Conditions to Closing. Developer's obligation to accept the Site and to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Developer, be conditional and contingent upon the satisfaction, or waiver by Developer, of each and all of the following conditions (collectively, "**Developer's Conditions to Closing**") within the time provided in the Schedule of Performance:

a. Developer shall have approved the physical and environmental condition of the Site as set forth in Section 502.5. Developer shall have received any and all approvals required under CEQA and NEPA (if required).

b. Title Company is committed to issue Developer's Title Policy insuring title to the Site is vested in Developer.

c. City shall have deposited into Escrow a certificate ("**FIRPTA Certificates**") in such form as may be required by the Internal Revenue service pursuant to Section 1445 of the Internal Revenue Code.

d. Developer shall have obtained financing commitments for the development of the Site acceptable to Developer in accordance with Sections 407, and City shall have approved such commitments.

e. Developer shall have obtained a reservation of Tax Credits from the California Tax Credit Allocation Committee acceptable to Developer.

f. City shall have deposited the executed Grant Deed into Escrow.

g. Developer shall have obtained all required governmental approvals and permit ready letters, including site plan review, conditional use, subdivision, building, grading, landscaping, and others for development of the Site as the Project, including, without limitation, those set forth in Section 502.

h. Developer shall complete and deliver to Escrow a preliminary change of ownership form as required by the County.

i. City has deposited or caused to be deposited into escrow two (2) copies of the each of CDBG Grant Agreement, the PLHA Loan Agreement and, if applicable, the original PLHA Note and the PLHA Guaranty.

j. City shall have deposited or caused to be deposited into Escrow all the documents required under Section 405.3.

k. City Council shall have duly adopted all resolutions and taken all actions necessary to vacate the public right-of-way located within the Site, and such vacation shall have become effective in accordance with applicable law.

Any waiver of the foregoing conditions must be expressed in writing. In the event that the foregoing conditions or defaults in the performance of its obligations hereunder, Developer may terminate this Escrow.

2. City's Conditions to Closing. City's obligation to convey the Site and City's obligation to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of City, be conditional and contingent upon the satisfaction, or waiver by City, of each and all of the following conditions (collectively, "**City's Conditions to Closing**") within the time provided in the Schedule of Performance:

a. Developer shall have obtained evidence of financing commitments for the development of the Site in accordance with Sections 407 and City shall have approved such commitments.

b. Developer shall have obtained the reservation of Tax Credits from the California Tax Credit Allocation Committee.

c. Title Company is committed to issue Developer's Title Policy, the City's Title Policy and the PLHA Title Policy.

d. Developer shall have timely submitted to City plans and drawings for all improvements to be constructed on the Site, including for site plan review, conditional use, building, grading, landscaping and other plans and drawings, as provided in Section 502 and all necessary plans shall have been reviewed or revised as required by Developer and City, and finalized. All approvals pursuant to CEQA and NEPA (if required) have been approved as final.

e. Developer shall not have made or attempted to make a Transfer in violation of Section 303, provided that City shall give notice of any violation of Section 303 and afford Developer, as the case may be, the opportunity to cure the violation.

f. Developer shall have deposited into Escrow all of the following: (i) City Loan Documents; (ii) CDBG Grant Agreement; (iii) the PLHA Loan Documents (pursuant to Section 402.3(v)); (iv) the Acceptance of Grant Deed; and (v) the Regulatory Agreement, each executed and acknowledged, as applicable.

g. Developer shall have deposited or caused to be deposited into Escrow all the documents required under Section 405.4.

h. City Council shall have duly adopted all resolutions and taken all actions necessary to vacate the public right-of-way located within the Site, and such vacation shall have become effective in accordance with applicable law.

i. City Council shall have duly adopted a resolution declaring the Site to be exempt surplus land in compliance with the Surplus Land Act (California Government Code Section 54220 et seq.) and authorizing the disposition of the Site on the terms contemplated by this Agreement and obtained the applicable approval letter from the California Department of Housing and Community Development.

Any waiver of the foregoing conditions must be expressed in writing. In the event that the foregoing conditions or defaults in the performance of its obligations hereunder, City may terminate this Escrow.

3. Both Parties' Conditions to Closing. Prior to the Closing Date, Developer and City shall execute and deliver one or more certificates ("**Taxpayer ID Certificate**") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the Site, date of closing, gross price, and taxpayer identification number for Developer and City. Prior to the Closing, Developer and City shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing. At the Closing neither party shall be in breach of its obligations hereunder.

E. (§405) Conveyance of the Site.

1. Time for Conveyance. Escrow shall close after satisfaction of all conditions to close of Escrow, but not later than the date specified in the Schedule of Performance, unless extended by the mutual agreement of the parties or any Enforced Delay. Possession of the Site shall be delivered to Developer concurrently with the recordation of the Grant Deed.

2. Escrow Agent to Advise of Costs. On or before the date set in the Schedule of Performance, the Escrow Agent shall advise City and Developer in writing of the fees, charges, and costs necessary to clear title and close Escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

3. Deposits By City Prior to Closing. On or before the date set in the Schedule of Performance, but in all events not later than one (1) business day prior to the scheduled Closing Date, the City shall execute, acknowledge and deposit (or cause to be deposited) into Escrow (i) the Grant Deed; (ii) an estoppel certificate certifying that Developer has completed all acts, other than as specified, necessary for conveyance, if such be the fact; (iii) the CDBG Grant Agreement; (iv) the PLHA Loan Agreement and related documents if applicable pursuant to Section 402.3(v); (v) the

Regulatory Agreement; and (vi) payment to Escrow Agent of City's share of costs as determined by the Escrow Agent pursuant to Section 409.

4. Deposits By Developer Prior to Closing. On or before the date set in the Schedule of Performance, but in all events not later than one (1) business day prior to the scheduled Closing Date, Developer shall execute and acknowledge as may be required and deposit into Escrow: (i) the Acceptance of Grant Deed to be attached to the Grant Deed prior to recordation; (ii) the Regulatory Agreement; (iii) the City Loan Documents; (iv) the CDBG Grant Agreement; (v) the PLHA Loan Documents pursuant to Section 402.3(v); (vi) an estoppel certificate certifying that City has completed all acts, other than as specified, necessary to conveyance, if such be the fact; (vii) the County's preliminary change of ownership form; and (viii) payment to Escrow Agent of Developer's share of costs as determined by the Escrow Agent pursuant to Section 409.

5. Recordation and Disbursement of Funds. Upon the completion by City and Developer of the deliveries and actions specified in these Escrow instructions precedent to Closing, the Escrow Agent shall be authorized to (i) buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause to be recorded in the Official Records of the County in the following order: the Grant Deed with the Acceptance of Grant Deed attached, the Regulatory Agreement, any documents securing the Senior Financing, the City Deed of Trust, the PLHA Deed of Trust and any other appropriate instruments delivered through this Escrow, if necessary or proper to, and provided that the fee title interest can, vest in Developer in accordance with the terms and provisions herein. Concurrent with recordation, Escrow Agent shall deliver (i) Developer's Title Policy to Developer insuring title and conforming to the requirements of Section 406.4(i); (ii) City's Title Policy to City insuring the City Loan and conforming to the requirements of Section 406.4(ii); and (iii) PLHA's Title Policy insuring the PLHA Loan and conforming to the requirements of Section 406.4(iii). Following recordation, the Escrow Agent shall deliver copies of said instruments to Developer, City and County (as applicable). At Closing, Escrow Agent shall deliver one (1) fully executed copy of the City Loan Documents, CDBG Grant Agreement and the PLHA Loan Documents, to each of Developer and City.

F. (§406) Title Matters.

1. Condition of Title. City shall convey to Developer fee title of the Site subject only to: (i) the Grant Deed (with the Repurchase Option), the City Deed of Trust, the PLHA Deed of Trust and the Regulatory Agreement; (ii) any current taxes, a lien not yet payable; (iii) quasi-public utility, public alley and public street easements of record approved by Developer, which approval shall not be unreasonably withheld; (iv) Senior Financing; and (v) covenants, conditions and restrictions, reciprocal easements, and other encumbrances and title exceptions approved by Developer. City shall convey title to Developer pursuant to the Grant Deed in the form set forth in Attachment No. 4.

2. City Not to Encumber Site. City hereby covenants to Developer that it has not and will not, from the Effective Date of this Agreement through close of Escrow, transfer, sell, hypothecate, pledge, lease or otherwise encumber the Site without express written permission of Developer.

3. Approval of Title Exceptions. Prior to the date in the Schedule of Performance, City shall deliver a preliminary report for the Site, dated no earlier than the date of this Agreement, to Developer including copies of all documents referenced therein ("**Title Report**"). Prior to the date

in the Schedule of Performance ("**Title Approval Date**"), Developer shall deliver to City written notice, with a copy to Escrow Agent, specifying in detail any exception disapproved and the reason therefor. Prior to the date in the Schedule of Performance, City shall deliver written notice to Developer as to whether City will or will not cure the disapproved exceptions. If City elects not to cure the disapproved exceptions, Developer may terminate this Agreement without any liability of City to Developer, or Developer may withdraw its earlier disapproval. If City elects to cure the disapproved exceptions, City shall do so on or before the close of Escrow. If, after the Title Approval Date, Developer receives a supplement to the Title Report from the Title Company setting forth any new matter of record encumbering the Site which was not set forth on the original Title Report (or any previous supplement thereto) and of which Developer was not otherwise aware as of the Title Approval Date ("**New Title Matter**"), Developer may, on or prior to 5:00 p.m. P.S.T. on the third (3rd) business day following Developer's receipt of notice of such New Title Matter ("**New Matter Approval Date**"), object to such New Title Matter by sending written notice thereof to City and Escrow Holder; provided, however, City shall remove any monetary liens which constitute New Title Matters regardless of whether Developer timely objects to such monetary liens. Developer's failure to object in writing to any New Title Matter on or prior to the New Matter Approval Date shall be automatically deemed to be Developer's approval of such New Title Matter and such New Title Matter shall thereafter be deemed to be a permitted encumbrance. If Developer delivers written objection to any New Title Matter on or prior to the New Matter Approval Date applicable thereto, and City does not deliver as of 5:00 p.m. P.S.T. on the fifth (5th) business day following the New Matter Approval Date ("**City Response Date**") written notice that City covenants and agrees to remove prior to the Closing such New Title Matter objected to by Developer, then Developer may terminate this Agreement by delivery of written notice thereof to City and Escrow Holder on or before 5:00 p.m. P.S.T. on the second (2nd) business day following City Response Date ("**New Matter Termination Date**"). Developer's failure to terminate this Agreement in writing as a result of any New Title Matter on or prior to the New Matter Termination Date shall constitute Developer's waiver of its right to terminate this Agreement as a result of such New Title Matter.

4. Title Policies.

(i) Developer's Title Policy. At the Closing, Title Company shall issue to Developer an ALTA (non-extended) owner's policy of title insurance ("**Developer's Title Policy**") with title to the Site vested in Developer with an insured amount of Seven Million Two Hundred Thousand Dollars ($7,200,000) ("**Insured Amount**"), containing no exception to such title which has not been approved, waived or caused by Developer in accordance with Section 406.3. Developer's Title Policy shall include any available additional title insurance, extended coverage or endorsements that Developer has reasonably requested. City shall pay only for that portion of the title insurance premium attributable to the ALTA non-extended coverage and the amount of the Insured Amount, and Developer shall pay for the premium for any additional title insurance, extended coverage or special endorsements.

(ii) City Loan Title Policy. At the Closing, the Title Company shall issue to City an ALTA loan policy of title insurance in the amount of the City Note ("**City Title Policy**") with title to the Site vested in Developer and insuring the City Deed of Trust against the Site subject only to the Senior Financing and such exceptions as approved by City with the PLHA Deed of Trust specifically shown as subordinate, together with any endorsements as reasonably required by City.

(iii) PLHA Title Policy. At the Closing, the Title Company shall issue to the County an ALTA loan policy of title insurance in the amount of the PLHA Loan ("**PLHA Title Policy**") with title to the Site vested in Developer and insuring each of the PLHA Deed of Trust against the Site subject only to the Senior Financing and the City Deed of Trust and such exceptions as approved by City together with any endorsements as reasonably required by City.

G. (§407) Evidence of Financial Capability.

Within the time set forth in the Schedule of Performance, Developer shall submit to City Manager for approval evidence reasonably satisfactory to City Manager that Developer has the financial capability necessary for development of the Project thereon pursuant to this Agreement. Such evidence of financial capability shall include all of the following:

1. Reliable cost estimates for Developer's total cost of developing the Project (including both "hard" and "soft" costs).

2. A complete copy of the construction loan commitment obtained by Developer to finance the development of the Project, or such other documentation reasonably satisfactory to City Manager sufficient to demonstrate that Developer has adequate funds available and committed to finance the development of the Project.

3. A financial statement and/or other documentation reasonably satisfactory to City Manager sufficient to demonstrate that Developer has adequate funds to build and complete the Project available and/or committed considering all sources specified in this Agreement and the proceeds of the construction loan commitment.

4. A copy of the proposed contract between Developer and its general contractor for all of the improvements required to be constructed by Developer hereunder, certified by Developer to be a true and correct copy thereof. City Manager shall also have the right to review and approve any revisions that are made to the proposed contract after its approval by City Manager which would increase the amount of the contract by more than ten percent (10%) and/or substantially change other terms in the contract.

5. Documentation that Developer has secured adequate Housing Program Funds for the development of the Project as described in Section 401.

Developer covenants and agrees to take all action, furnish all information, give all consents, and pay all sums reasonably required to keep the construction loan commitment in full force and effect and shall comply in all material respects with all conditions thereof, and shall promptly execute, acknowledge and deliver all applications, credit applications and data, audited financial statements, and documents in connection therewith.

H. (§408) Condition of Site.

1. Site Assessment and Remediation. Developer shall be responsible for conducting assessments of the Site and for any required remediation if Developer accepts the Site pursuant to the terms of this Agreement. City shall be entitled to review any remedial workplan prepared for the Site. City is conveying the property in an "AS-IS" condition and shall not be responsible for any Hazardous Materials on the Site.

2. Disclaimer of Warranties. Upon the Close of Escrow, Developer shall accept the Site in its "AS-IS" condition and shall be responsible for any defects in the Site, whether patent or latent, including, without limitation, the physical, environmental, and geotechnical condition of the Site and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, abandoned wells or other structures located on, under or about the Site. City makes no representation or warranty concerning the physical, geotechnical or other condition of the Site, the suitability of the Site for the Project, or the present use of the Site, and specifically disclaims all representations or warranties of any nature concerning the Site made by City or their employees, agents and representatives. The foregoing disclaimer includes, without limitation, hazardous materials, topography, climate, air, water rights, utilities, present and future zoning, soil, subsoil, the purpose for which the Site is suited, or drainage. Moreover, City makes no representation or warranty concerning the compaction of soil upon the Site, nor of the suitability of the soil for construction.

3. Right to Enter Site; Indemnification.

(i) Prior to the Closing, Developer has the right to enter upon the Site to conduct soils, engineering, or other tests and studies, to perform preliminary work or Site investigation or for any other purposes to carry out the terms of this Agreement. Developer shall provide copies of all such investigations to City.

(ii) Developer shall indemnify, defend, and hold City harmless from and against any claims, injuries or damages arising out of or involving any such entry or activity as provided in Section 505. Any such activity shall be undertaken only after securing any necessary permits from the appropriate governmental agencies and providing City with certificates of insurance evidencing the coverages required in Section 506.

4. Hazardous Materials. Developer understands and specifically agrees that in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Closing, then Developer may look to current or prior owners of the Site, but under no circumstances shall Developer look to City for any liability or indemnification regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. Developer, and each of the entities constituting Developer, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges City, their directors, officers, employees, and agents, and their respective heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Site, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors, assigns or any affiliated entity of Developer, against City, arising by virtue of the physical or environmental condition of the Site, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this Release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined

below) shall be deemed third party beneficiaries of such release. In connection therewith, Developer and each of the entities constituting Developer, expressly agree to waive any and all rights which said party may have under Section 1542 of the California Civil Code which provides as follows:

> "**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**"

DEVELOPER'S INITIALS: MJM **CITY'S INITIALS:** CKM

For purposes of this Section 408, the following terms shall have the following meanings:

a. "Environmental Claim" means any claim for personal injury, death and/or property damage made, asserted, or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Site or its operations and arising or alleged to arise under any Environmental Law.

b. "Environmental Cleanup Liability" means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Site, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with respect to the Site or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

c. "Environmental Compliance Cost" means any cost or expense of any nature whatsoever necessary to enable the Site to comply with all applicable Environmental Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Site is capable of such compliance.

d. "Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical sub-stances from industrial or commercial activities, or (D) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

e. "Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental City, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (B) defined as a "hazardous waste" or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health

and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(n)(1)-(2)of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (F) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903); (L) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601); (M) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq*.; or (N) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time here-after, in effect.

Notwithstanding any other provision of this Agreement, Developer's release as set forth in the provisions of this Section, as well as all provisions of this Section, shall survive the termination of this Agreement and shall continue in perpetuity, with respect to any act or omission of Developer (its employees, persons, invitees, agents, assignees, contractors, subcontractors) related to the Site and/or the Project.

I. (§409) Costs of Escrow.

1. Allocation of Costs. Escrow Agent is directed to allocate costs as follows: City shall pay the cost of Developer's Title Policy while Developer shall pay premiums for any additional insurance, extended coverage or special endorsements. Developer shall pay the cost of City's Title Policy and the PLHA Title Policy. Developer shall pay any documentary transfer taxes as well as any recording fees in connection with the recordation of the Grant Deed, the City Deed of Trust and the PLHA Deed of Trust. No recording fees shall be due for the recording of the Regulatory Agreement. Developer and City shall each pay one-half (1/2) of all Escrow and similar fees, except that if one party defaults under this Agreement, the defaulting party shall pay all Escrow fees and charges as well as any title cancellation fees. Subject to Section 806, each party shall pay its own attorneys' fees for entering into this Agreement.

2. Proration and Adjustments. As the Site is owned by a governmental entity, there are no ad valorem taxes and assessments on the Site so prorations will not be required. After the Closing, Developer shall be responsible for all ad valorem taxes and assessments accruing thereafter.

3. Extraordinary Services of Escrow Agent. It is understood that Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of the Escrow Agent

as listed in these instructions. In the event that the Escrow Agent renders any service not provided for in this Agreement or that there is any assignment of any interest in the subject matter of this Escrow or that any controversy arises hereunder, or that the Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

4. Escrow Agent's Right to Retain Documents. Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses shall be paid. The parties jointly and severally promise to pay such sums upon demand.

J. (§410) Termination of Escrow.

1. Termination. Escrow may be terminated by demand of either party which then shall have fully performed its obligations hereunder required to be performed by the date of such demand if:

a. The Conditions to Closing have not occurred or have not been approved, disapproved, or waived as the case may be, by the approving party by the date established herein for the occurrence of such Condition, including any grace period pursuant to this Section; or

b. Either party is in breach of the terms and conditions of this Agreement after the expiration of any applicable notice and cure periods; or

c. Either party has exercised any right to terminate as expressly set forth in this Agreement, including, but not limited to, the right to terminate pursuant to Section 406.3.

In the event of the foregoing, the terminating party may, in writing, demand return of its money, papers, or documents from the Escrow Agent and shall deliver a copy of such demand to the non-terminating party. No demand shall be recognized by the Escrow Agent until fifteen (15) days after the Escrow Agent shall have mailed copies of such demand to the non-terminating party, and if no objections are raised in writing to the terminating party and the Escrow Agent by the non-terminating party within the fifteen (15) day period. In the event of such objections, the opportunity to cure shall be provided as stated below in subsection 2 of this Section. In addition, the Escrow Agent is authorized to hold all money, papers, and documents until instructed in writing by both Developer and City or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the Escrow shall be closed as soon as possible and neither party shall have any further liability to the other.

2. Opportunity to Cure. Prior to Closing, in the event any of the Conditions to Closing are not satisfied or waived by the party with the power to approve said Conditions ("**Approving Party**"), then such party shall explain in writing to the other party ("**Non-approving Party**") the reason for the disapproval. Thereafter, the Non-approving Party shall have an additional thirty (30) days (or such shorter period as may be necessitated to meet deadlines associated with the Tax Credits) ("**Cure Period**") to satisfy any such Condition to Closing, and only if such Conditions still cannot be satisfied may the Approving Party terminate the Escrow. In the event Escrow is not in a condition to close because of a default by any party, and the performing party has made demand as stated in subsection 1 of this Section, then upon the non-performing party's delivering its objection

to Escrow Agent and the performing party within the Cure Period, the non-performing party shall have the right to cure the default in accordance with and in the time provided in Section 801.

3. Other Duties upon Termination. Upon termination of Escrow pursuant to this Section for any reason, the Parties shall have the following duties and obligations in addition to any others described above:

a. In the event such termination is due to the default of Developer, then subject to the rights and consents of the third party authors, all non-privileged and non-proprietary plans, drawings, specifications, reports, and other documents prepared by Developer or Developer's contractors or vendors shall become the property of City and shall be delivered to City, without representation or warranty, by Developer within ten (10) days of receipt of notice from City.

b. In the event such termination is due to the default of Developer, City shall be entitled to terminate this Agreement and to receive repayment from Developer for (i) all of City's actual, reasonable third-party costs and expenses incurred with respect to this Agreement, and (ii) any recourse obligations in connection with the PLHA Loan outstanding during the escrow period. In the event that Developer fails to remit repayment of such amounts to City within fifteen (15) days after receipt of written notice from City therefor, interest on the unpaid amounts shall accrue at the rate of ten percent (10%) per annum until paid.

c. In the event such termination is due to the default of City, Developer shall be entitled to terminate this Agreement, and in such case Developer shall not be required to repay City any of the amounts described in subparagraph (b) above, but Developer shall not be entitled to any damages of any kind; provided, however, City shall reimburse Developer for reasonable Project costs, incurred prior to such termination, but not yet paid as of termination.

K. (§411) Responsibility of Escrow Agent.

1. Deposit of Funds. In accordance with Section 404, all funds received in Escrow shall be deposited by the Escrow Agent in a federally insured Escrow account with any state or national bank doing business in the State of California and may not be combined with other Escrow funds of Escrow Agent or transferred to any other general Escrow account or accounts.

2. Notices. All communications from the Escrow Agent shall be directed to the addresses and in the manner provided in Section 901 of this Agreement for notices, demands and communications between City and Developer.

3. Sufficiency of Documents. The Escrow Agent is not to be concerned with the sufficiency, validity, correctness of form, or content of any document prepared outside of Escrow and delivered to Escrow. The sole duty of the Escrow Agent is to accept such documents and follow Developer's and City's instructions for their use.

4. Exculpation of Escrow Agent. The Escrow Agent shall in no case or event be liable for the failure of any of the Conditions to Closing of this Escrow, or for forgeries or false personation, unless such liability or damage is the result of negligence or willful misconduct by the Escrow Agent.

5. Responsibilities in the Event of Controversies. If any controversy documented in writing arises between Developer and City or with any third party with respect to the subject matter of this Escrow or its terms or conditions, the Escrow Agent shall not be required to determine the same, to return any money, papers or documents, or take any action regarding the Site prior to settlement of the controversy by a final decision of a court of competent jurisdiction or written agreement of the parties to the controversy. The Escrow Agent shall be responsible for timely notifying Developer and City of the controversy. In the event of such a controversy, the Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely close Escrow or take any other action unless such controversy has been caused by the failure of the Escrow Agent to perform its responsibilities hereunder.

V. (§500) DEVELOPMENT OF THE SITE.

A. (§501) Scope of Development.

The Site shall be developed by Developer as provided in the Scope of Development, the Regulatory Agreement, and the plans and permits approved by City pursuant to Section 502. Developer shall commence and diligently prosecute the Project to completion within the time provided and otherwise in strict compliance with this Agreement. Construction of the Project shall commence as specified in the Schedule of Performance.

B. (§502) Development Plans, Final Building Plans and Environmental Review.

1. Proposed Development's Consistency With Plan and Codes. Developer shall obtain all entitlements at its own cost for approval of the Project. City warrants and represents that City's General Plan and Zoning Ordinance permit Developer's proposed development, and construction, operation, and use of the Site as provided in this Agreement including, without limitation, the Scope of Development, subject only to (i) those development approvals yet to be obtained, including, if necessary, proposed General Plan and Zoning Ordinance amendments, Site Plan Review and subdivision approval (if required), and (ii) if applicable, City's review and approval of the Project in accordance with the California Environmental Quality Act; provided that it is expressly understood by the parties hereto that City makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City, and City reserving full police power authority over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items, nor a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

2. Evolution of Development Plan. Concurrently with the approval of this Agreement, City has reviewed Developer's Basic Concept Drawings. On or before the date set forth in the Schedule of Performance, Developer shall submit to City preliminary, and thereafter final, drawings and specifications for development of the Site and each Site thereof in accordance with the Scope of Development, and all in accordance with City's requirements. The term preliminary and final drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, signage, a description of structural, mechanical, and electrical systems, and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development and the various development approvals referenced hereinabove, except as

such items may be amended by City (if applicable) and by mutual consent of City and Developer. Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved. Plans in sufficient detail to obtain all discretionary land use approvals, including, if applicable, for site plan approval, conditional use permit, and other actions requiring Planning Commission approval, shall be submitted and processed concurrently for the Site.

3. Developer Efforts to Obtain Approvals. Developer shall exercise its commercially reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Developer shall comply with all applicable development standards in City's Municipal Code and shall comply with all building code, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

4. City Assistance. Subject to Developer's compliance with (i) the applicable City development standards for the Site, and (ii) all applicable laws and regulations governing such matters as public hearings, site plan review and environmental review, City agrees to provide reasonable assistance to Developer, at no cost to City, in the processing of Developer's submittals required under this Section. City's failure to provide necessary approvals or permits within such time periods, after and despite Developer's reasonable efforts to submit the documents and information necessary to obtain the same, shall constitute an Enforced Delay.

5. Approval/Disapproval. City shall approve or disapprove any submittal made by Developer pursuant to this Section within thirty (30) days after such submittal. All submittals made by Developer will note the 30-day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in writing the reason for the disapproval and the changes which City requests be made. City's failure to disapprove the submittal within thirty (30) days shall be deemed an approval of the submittal. Developer shall make the required changes and revisions which would not materially impact the economic feasibility of the Project and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) days after the date of disapproval. Thereafter, City shall have an additional thirty (30) days for review of the resubmittal, but if City disapproves the resubmittal, then the cycle shall repeat, until City's approval has been obtained. The foregoing time periods may be shortened if so specified in the Schedule of Performance.

6. Environmental Review. The term "Environmental Review" shall mean the investigation and analysis of the Project's impacts on the environment as may be required under the California Environmental Quality Act ("CEQA"), Public Resources Code §21000, et seq., and the National Environmental Policy Act (42 U.S.C. §4321 *et seq*., "NEPA") if required. or of the Project's impacts on any species of plant or animal listed as a species of concern, a threatened species, or an endangered species as may be required by the California Endangered Species Act ("CESA"), Fish and Game Code §2050, et seq., and/or the U.S. Endangered Species Act ("USESA"), 16 U.S.C. §1531, et seq., or other applicable California or federal law or regulation. Pursuant to the Class 32 categorical exemption (CEQA Guideline Section 15332 (Infill Development Projects)), this Project is exempt from environmental review, because (a) the development is consistent with the applicable General Plan designation and all applicable General Plan policies, as well as the applicable zoning designations and regulations; (b) Development occurs within the city limits on a site of less than 5 acres in size that is substantially surrounded by urban uses; (c) the development site has no value for

endangered, rare or threatened species; (d) the development would not result in any significant effects related to traffic, noise, air quality or water quality; and (e) the development site can be adequately served by all required utilities and public service. In addition, none of the exceptions to categorical exemptions apply pursuant to State CEQA Guidelines §15300.2 (Exceptions).

C. (§503) Developer Responsibilities During Construction.

The cost of constructing all of the improvements required to be constructed for the Project shall be borne by Developer. If it is determined that Project is subject to prevailing wages, Developer shall pay prevailing wages for the Project and Developer shall defend and hold City harmless from and against any all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that any portion of the Project is subject to payment of prevailing wages. This Section shall survive termination of the Agreement.

In addition, in developing the Site, Developer shall take actions as City shall reasonably require to minimize the impact of construction and airborne debris on nearby properties.

D. (§504) Schedule of Performance; Progress Reports.

Subject to Section 903, Developer shall begin and complete all plans, reviews, construction and development specified in the Scope of Development within the times specified in the Schedule of Performance or such reasonable extensions of said dates as may be mutually approved in writing by the parties.

Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay, as defined in Section 903. Developer shall keep City informed of the progress of construction and shall submit monthly written reports of the progress of the construction to City in the form required by City.

E. (§505) Indemnification During Construction.

During the periods of construction on the Site and until such time as City has issued a Release of Construction Covenants with respect to the construction of the improvements thereon, Developer agrees to and shall indemnify and hold City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from 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 which shall occur on the Site and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of Developer or its agents, servants, employees, or contractors. Developer shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of City, or their respective agents, servants, employees, or contractors. City shall not be responsible for any acts, errors, or omissions of any person or entity except City and their respective agents, servants, employees, or contractors, subject to any and all statutory and other immunities. The provisions of this Section shall survive the termination of this Agreement.

F. (§506) Insurance.

Except as provided in this Section, prior to the entry by Developer on the Site pursuant to Section 409.3 and prior to the commencement of any demolition work and/or construction by Developer on the Project, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of such entry or construction, the following policies of insurance, as applicable:

1. Commercial General Liability Insurance. A policy of commercial general liability insurance written on a per occurrence basis in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence and TWO MILLION DOLLARS ($2,000,000.00) in the aggregate.

2. Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Developer, against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Developer in the course of carrying out the work or services contemplated in this Agreement.

3. Automobile Insurance. A policy of automobile liability insurance written on a per accident basis in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) combined single limit per accident for bodily injury and property damage covering owned (if applicable), leased, hired, and non-owned vehicles.

4. Builder's Risk Insurance. A policy of "Builder's Risk" insurance covering the full replacement value of all of the improvements to be constructed by Developer pursuant to this Agreement plus Developer's personal property and equipment. Developer shall procure the builder's risk insurance policy prior to commencing construction.

All of the above policies of insurance, except the Builder's Risk Insurance, shall be primary insurance and shall name City, and its officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against City, and its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice to City and Developer. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to City Manager. No work or services under this Agreement shall commence until Developer has provided City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by City.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of City ("**Risk Manager**") due to unique circumstances.

Developer shall provide in all contracts with contractors, subcontractors, architects, and engineers that said contractor, subcontractor, architect, or engineer shall maintain (if applicable) the

same policies of insurance required to be maintained by Developer pursuant to this Section, unless waived or modified by the Risk Manager.

Developer agrees that the provisions of this Section shall not be construed as limiting in any way to the extent to which Developer may be held responsible for the payment of damages to any persons or property resulting from Developer's activities or the activities of any person or persons for which Developer is otherwise responsible.

G. (§507) City and Other Governmental City Permits.

Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Site which are Developer's responsibility under the applicable Scope of Development, Developer shall at his own expense secure or cause to be secured any and all permits which may be required by City or any other governmental agency affected by such construction, development or work. Developer shall not be obligated to construct if any permit is not issued. If there is delay beyond the usual time for obtaining any such permits due to no fault of Developer, the Schedule of Performance shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained. Developer shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by City which are standard for and uniformly applied to similar projects in City except to the extent that such fees and charges are waived for Project.

H. (§508) Rights of Access.

Representatives of City shall have the reasonable right to access the Site upon reasonable prior notice without charges or fees, at any time during normal construction hours during the period of construction and upon reasonable notice to Developer, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of Developer. Such representatives of City shall be those who are so identified in writing by City Manager. Each such representative of City shall identify himself or herself at the job site office upon his or her entrance to the Site, and shall provide Developer, or the construction superintendent or similar person in charge on the Site, a reasonable opportunity to have a representative accompany him or her during the inspection. City shall indemnify, defend, and hold Developer harmless from any injury or property damage caused or liability arising out of City's exercise of this right of access.

I. (§509) Applicable Laws.

Developer shall carry out the construction of the improvements to be constructed by Developer in conformity with all applicable laws, including all applicable federal and state labor laws.

J. (§510) Nondiscrimination During Construction.

Developer, for itself and its successors and assigns, agrees that in the construction of the improvements to be constructed by Developer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

K. (§511) Taxes, Assessments, Encumbrances and Liens.

Developer shall pay, prior to delinquency, all real estate taxes and assessments assessed or levied subsequent to conveyance of title of the Site. Until the date Developer is entitled to the issuance by City of a Release of Construction Covenants, Developer shall not place or allow to be placed thereon any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed) prohibited by this Agreement. Developer shall remove or have removed any levy or attachment made on the Site, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, or to limit the remedies available to Developer in respect thereto.

L. (§512) Rights of Holders of Approved Security Interests in Site.

1. Definitions. As used in this Section, the term "mortgage" shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the Loanee under any other conveyance for financing.

2. No Encumbrances Except Mortgages to Finance the Project. Notwithstanding the restrictions on transfer in Section 303, mortgages required for any reasonable method of financing of the development and/or construction of the improvements are permitted before issuance of a Release of Construction Covenants but only for the purpose of securing loans of funds used or to be used for the construction and development of improvements on the Site, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any for same, so long as the refinancing does not exceed the then outstanding balance of the existing financing, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors. Developer (or any entity permitted to acquire title under this Section) shall notify City in advance of any mortgage, if Developer or such entity proposes to enter into the same before issuance of the Release of Construction Covenants. Developer or such entity shall not enter into any such conveyance for financing without the prior written approval of City, which shall not be unreasonably withheld. Any lender approved by City pursuant to Section 408 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, Developer shall promptly notify City of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Release of Construction Covenants, whether by voluntary act of Developer or otherwise.

3. Developer's Breach Not to Defeat Mortgage Lien. Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of

any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

4. Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion.

5. Notice of Default to Holders of Mortgages, Deed of Trust or other Security Interest. Whenever City shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to City therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

6. Right to Cure. Each holder (insofar as the rights of City are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

a. obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and

b. add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first submitting evidence satisfactory to City that it has the qualifications and financial responsibility necessary to construct and complete the improvements and enter into an agreement with City with respect to the obligations hereunder. Any holder properly completing such improvements shall be entitled, upon written request made to City, to a Release of Construction Covenants from City.

7. City's Rights upon Failure of Holder to Complete Improvements. In any case where one hundred eighty (180) days after default by Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, City may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon

payment to the holder of an amount equal to the sum of the following:a.The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

b. All expenses incurred by the holder with respect to foreclosure, if any;

c. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;

d. The costs of any improvements made by such holder, if any; and

e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by City.

In the event that the holder does not exercise its option to construct afforded in this Section, and City elects not to purchase the mortgage of holder, upon written request by the holder to City, City agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by City). The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs a. through e. hereinabove, and any balance remaining thereafter shall be applied as follows:

(1) First, to reimburse City, on its own behalf and on behalf of City, for all costs and expenses actually and reasonably incurred by City, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(2) Second, to reimburse City, on its own behalf and on behalf of City, for all payments made by City to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees.

(3) Third, to reimburse City, on its own behalf and on behalf of City, for all costs and expenses actually and reasonably incurred by City, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section.

(4) Fourth, any balance remaining thereafter shall be paid to Developer.

8. Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by Developer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by City of a Release of Construction Covenants for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, City may cure the default prior to completion of any foreclosure. In such event, City shall be entitled to reimbursement from Developer or other entity of all costs and expenses incurred by City in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

a. Any mortgage for financing permitted by this Agreement; and

b. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided, that nothing herein shall be deemed to impose upon City any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

9. Right of City to Satisfy Other Liens on the Site After Conveyance of Title. After the conveyance of title and prior to the recordation of a Release of Construction Covenants for construction and development, and after Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

M. (§513) Release of Construction Covenants.

Upon the completion of all construction required to be completed by Developer on the Site, City shall furnish Developer with a Release of Construction Covenants for the Site in the form attached hereto as Attachment No. 8 upon written request therefor by Developer. The Release of Construction Covenants shall be executed and notarized so as to permit it to be recorded in the office of the Recorder of Santa Clara County. A Release of Construction Covenants shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and of full compliance with the terms of this Agreement with respect thereto. A partial Release of Construction Covenants applicable to less than the entire Site shall not be permitted.

After the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement with respect to the Site, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Grant Deed and the Regulatory Agreement attached hereto. After issuance of a Release of Construction Covenants, City shall not have any rights or remedies under this Agreement with respect to the Site, except as otherwise set forth or incorporated in the Grant Deed or the Regulatory Agreement.

City shall not unreasonably withhold a Release of Construction Covenants. If City refuses or fails to furnish a Release of Construction Covenants within thirty (30) days after written request from Developer or any entity entitled thereto, City shall provide a written statement of the detailed reasons City refused or failed to furnish a Release of Construction Covenants. The statement shall also contain City's opinion of the action Developer 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, or other minor so-called "punch list" items, City will issue its Release of Construction Covenants upon the posting of a bond in an amount representing one hundred twenty five percent (125%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to

City.

A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect Developer's right to obtain a Certificate of Occupancy from City before the Release of Construction Covenants is issued.

N. (§514) Estoppels.

No later than fifteen (15) days after the request of Developer or any holder of a mortgage or deed of trust, City shall, from time to time and upon the request of such holder, execute and deliver to Developer or such holder a written statement of City that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement, if such be the determination of City, and certifying as to whether or not Developer has at the date of such certification complied with any obligation of Developer hereunder as to which such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to City.

O. (§ 515) Subordination.

The covenants contained in Sections 1 through 4 of the Grant Deed (the "**Grant Deed Covenants**"), the PLHA Deed of Trust, the City Deed of Trust and the Regulatory Agreement may be subordinated to mortgages, liens or other security ("**liens**") for the construction loan (and, if applicable, an Approved Public Agency Loan) and subsequently to a permanent loan obtained by Developer as part of the financing of the Project, including any refinancing thereof established and obtained pursuant to and in compliance with the provisions of this Agreement.

City Manager is hereby authorized to execute any subordination agreements, intercreditor agreements, tri-party agreements, stand-still agreements, modifications to this Agreement, the City Note, the City Deed of Trust, and the Regulatory Agreement and/or other documents as may be reasonably requested by a senior lender and to request modifications by the County to the PLHA Loan Documents. The execution of such agreements is subject to the requirement that such agreements contain written provisions which City Manager finds are consistent with the standard requirements imposed by the lender and commonly required for financing of similar projects in the County, the subordination requirements contained in this Agreement and that City be given notice and be permitted an opportunity to cure any defaults under the senior lien within a reasonable time. Notwithstanding anything to the contrary herein, City also agrees to subordinate Section 805 of this Agreement if requested by a lender.

(i) City Loan Subordination. City shall only be required to subordinate the Grant Deed Covenants, the City Deed of Trust and the Regulatory Agreement to a construction loan and, if applicable, an Approved Public Agency Loan provided the following requirements are satisfied with respect to such loan:

a. Developer is not in default under any obligations to City including, but not limited to, the City Loan Documents, the PLHA Loan Documents and the Regulatory Agreement.

b. The senior lien shall be a construction loan with the proceeds to be used solely for construction of the Project with no land draw permitted. The loan agreement shall mandate a construction disbursement control system providing for periodic disbursements based upon submission of mechanic lien releases and inspection reports confirming the completion of the work. The loan budget shall be subject to the reasonable review and approval of City.

c. Interest rate and other terms shall be commercially reasonable for similar projects in the County.

d. The senior lender agrees to provide City with any notice of default which is provided by the senior lender to Developer and provide City with the right (but not the obligation) to cure any default and extend the time for such cure provided City is diligently processing the cure of such default.

e. City will execute a subordination agreement for recordation as reasonably required by a title company to provide title insurance for the senior loan.

f. A request for special notice shall be recorded concurrently with the subordination agreement.

g. The senior lender agrees to provide City with any notice of default which is provided by the senior lender to Developer and provide City with the right (but not the obligation) to cure any default and extend the time for such cure provided City is diligently processing the cure of such default.

h. Concurrently with the recordation of the subordination agreement, City Title Policy shall be updated as required by City at Developer's cost and expense insuring the City Deed of Trust is junior only to the specified senior loan.

i. City shall be provided complete executed copies of all senior loan documents.

City shall only be required to subordinate the Grant Deed Covenants, the City Deed of Trust and the Regulatory Agreement to a permanent loan provided the following requirements are satisfied:

a. Developer is not in default under any obligations to City including, but not limited to, the City Note, the City Deed of Trust and the Regulatory Agreement.

b. The Project has been completed in accordance with this Agreement.

c. The senior loan amount shall not exceed the greater of (i) current balance of the construction loan plus the reasonable costs to secure such loan plus any other senior loan; or (ii) eighty percent (80%) of the value of the Project.

d. The monthly payments under the senior loan shall be amortized over not less than twenty-five (25) years.

e. Developer shall provide reasonable evidence to City that the proceeds from the Project shall be sufficient to pay the payments under the senior loan.

f. Interest rate and other terms shall be commercially reasonable for similar projects in Santa Clara County.

g. The senior lender agrees to provide City with any notice of default which is provided by the senior lender to Developer and provide City with the right (but not the obligation) to cure any default and extend the time for such cure provided City is diligently processing the cure of such default.

h. City will execute a subordination agreement for recordation as reasonably required by a title company to provide title insurance for the senior loan.

i. A request for special notice shall be recorded concurrently with the subordination agreement.

j. Concurrently with the recordation of the subordination agreement, City's Title Policy shall be updated as required by City at Developer's cost and expense insuring the Deed of Trust is junior only to the specified senior loan.

k. City shall be provided complete executed copies of all senior loan documents.

City shall be entitled to prompt reimbursement from Developer for any costs associated with curing a default on a senior lien. If not paid by Developer, such sum shall be added to the City Note and secured by the City Deed of Trust.

(ii) PLHA Loan Subordination.

City shall request that the County subordinate the PLHA Deed of Trust to a construction loan and an Approved Public Agency Loan provided the following requirements are satisfied with respect to such loan:

a. Developer is not in default under any obligations to City including, but not limited to, the City Loan Documents, the PLHA Loan Documents, and the Regulatory Agreement.

b. The senior lien shall be a construction loan with the proceeds to be used solely for construction of the Project with no land draw permitted. The loan agreement shall mandate a construction disbursement control system providing for periodic disbursements based upon submission of mechanic lien releases and inspection reports confirming the completion of the work. The loan budget shall be subject to the reasonable review and approval of the County.

c. Interest rate and other terms shall be commercially reasonable for similar projects in the County.

d. The senior lender agrees to provide County with any notice of default which is provided by the senior lender to Developer and provide County with the right (but not the obligation) to

cure any default and extend the time for such cure provided County is diligently processing the cure of such default.

e. County will execute a subordination agreement for recordation as reasonably required by a title company to provide title insurance for the senior loan.

f. A request for special notice shall be recorded concurrently with the subordination agreement.

g. The senior lender agrees to provide County with any notice of default which is provided by the senior lender to Developer and provide County with the right (but not the obligation) to cure any default and extend the time for such cure provided County is diligently processing the cure of such default.

h. Concurrently with the recordation of the subordination agreement, the respective title policy shall be updated as required by County at Developer's cost and expense insuring the PLHA Deed of Trust is junior only to the specified senior loan.

i. County shall be provided complete executed copies of all senior loan documents.

City shall only be required to have the County subordinate the PLHA Deed of Trust to a permanent loan provided the following requirements are satisfied:

a. Developer is not in default under any obligations the PLHA Note, the PLHA Deed of Trust, and the Regulatory Agreement.

b. The Project has been completed in accordance with this Agreement.

c. The senior loan amount shall not exceed the greater of (i) current balance of the construction loan plus the reasonable costs to secure such loan plus any other senior loan; or (ii) eighty percent (80%) of the value of the Project.

d. The monthly payments under the senior loan shall be amortized over not less than twenty-five (25) years.

e. Developer shall provide reasonable evidence to County that the proceeds from the Project shall be sufficient to pay the payments under the senior loan.

f. Interest rate and other terms shall be commercially reasonable for similar projects in Santa Clara County.

g. The senior lender agrees to provide County with any notice of default which is provided by the senior lender to Developer and provide County with the right (but not the obligation) to cure any default and extend the time for such cure provided County is diligently processing the cure of such default.

h. County will execute a subordination agreement for recordation as reasonably required by a title company to provide title insurance for the senior loan.

i. A request for special notice shall be recorded concurrently with the subordination agreement.

j. Concurrently with the recordation of the subordination agreement, PLHA's Title Policy shall be updated as required by County at Developer's cost and expense insuring the Deed of Trust is junior only to the specified senior loan.

k. County shall be provided complete executed copies of all senior loan documents.

County shall be entitled to prompt reimbursement from Developer for any costs associated with curing a default on a senior lien. If not paid by Developer, such sum shall be added to the PLHA Note and secured by the PLHA Deed of Trust.

VI. (§600) USES AND MAINTENANCE OF THE SITE

A. (§601) Uses of the Site.

Developer covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Developer, that during development of the Site pursuant to this Agreement and thereafter, neither the Site nor the improvements, nor any portion thereof, shall be improved, used or occupied in violation of any applicable governmental restrictions or the restrictions of this Agreement. Furthermore, Developer and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Site or in the improvements, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Site or the improvements, or any portion thereof. Developer further covenants and agrees on behalf of itself and its successors and assigns to devote, use, operate and maintain the Site in accordance with this Agreement, the Grant Deed, the Regulatory Agreement, and the other documents recorded against the Residential Units pursuant to the provisions of this Agreement.

Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement and except as set forth in any subordination agreement, Developer hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Developer, that Developer and such successors and assigns shall use the Site solely for the purpose of constructing, maintaining and operating a project meeting the requirements and restrictions of this Agreement, including, without limitations, restriction of the rental and occupancy of the Residential Units only to Qualified Tenants for a rent not in excess of an Affordable Rent for the period specified herein.

B. (§602) Affordable Housing.

1. Construction of Affordable Housing. Developer covenants and agrees to construct a maximum of forty (40) residential units (one of which shall be a Manager's Unit) in conformity with the Scope of Development. All of the Residential Units, other than the Manager's Unit, shall be restricted to Affordable Rents to Low, Very Low, and Extremely Low Income Households, with at least nineteen (19) units reserved for IDD eligible residents. The location, size and specifications of the Residential Units, including affordability levels, shall be as set forth in the Scope of Development and as further designated by City. All Residential Units (which does not include the Manager's Unit), shall be subject to and shall be leased in compliance with the tenant

selection criteria described in the Regulatory Agreements. Notwithstanding anything to the contrary set forth herein, in the event of a conflict between the total number of restricted affordable units set forth herein and the total number of restricted affordable units which City may require by statute, Developer may elect to use the affordable unit restrictions established by the rules and regulations of the California Tax Credit Allocation Committee.

2. Residential Unit Requirements. All Residential Units constructed pursuant to this Agreement shall be occupied at all times only by the household of the Qualified Tenant who has rented that Residential Unit. Developer covenants to cooperate with City in taking all steps necessary to implement this requirement with respect to all Qualified Tenants. The restrictions upon rental and use of each Residential Unit shall continue for a period of ninety-nine (99) years from the initial rental of the Residential Unit by Developer to a Qualified Tenant.

3. Leasing of Residential Units by Developer.

a. Marketing Program. Prior to the deadline specified in the Schedule of Performance, Developer shall prepare and obtain City's approval (which shall not be unreasonably withheld) of a marketing and leasing program ("**Approved Marketing Program**") for the selection of tenants for the Residential Units at the Project that shall be in accordance and consistent with the use and other requirements and restrictions of the Regulatory Agreements. The Residential Units shall thereafter be marketed in accordance with the Approved Marketing Program as the same may be amended by Developer from time to time with City's prior written approval, which shall not be unreasonably withheld. Monthly during the initial lease-up period, and annually thereafter, Developer shall provide City with a report with respect to Residential Units under lease, leases in default, the status of implementation of the Approved Marketing Program, and such other information as City may reasonably request. City agrees to exercise reasonable efforts to assist Developer in connection with implementation of the Approved Marketing Program; provided, City shall not be under any obligation to incur any out-of-pocket expenses in connection therewith. From time to time, the City may provide Developer with a list of prospective tenants derived from the City's Below Market Rate Housing Program for Developer's consideration upon the availability of a Restricted Unit. Subject to all applicable federal, state, and local fair housing laws and the requirements of the Regulatory Agreements, Developer shall give priority review to such prospective tenants and, if Developer determines that a prospective tenant satisfies the applicable eligibility, income, and screening requirements, shall not unreasonably withhold approval of such prospective tenant.

b. Residential Units. As set forth above, each of the Residential Units shall be rented to a Qualified Tenant for a rental rate that does not exceed an Affordable Rent for the applicable Residential Unit.

c. Annual Tenancy Report. Developer shall provide City annually, by July 1 of each year, with a written report on Project occupancy for each Residential Unit, including information concerning the number of months during which each Residential Unit was occupied and the income category of each tenant household occupying a Residential Unit. The annual report and Developer's records related to each tenancy shall be subject to inspection and audit upon City's written request.

C. (§603) Obligation to Refrain from Discrimination.

There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site, or any portion thereof, 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 of the Site or any portion thereof (except as permitted by this Agreement). The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

D. (§604) Form of Nondiscrimination and Non-Segregation Clauses.

Subject to the tenancy/occupancy restrictions on the Residential Units not prohibited by federal law as embodied in this Agreement, which may modify the following nondiscrimination clauses, the following shall apply: Developer shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

1. Deeds: In deeds the following language shall appear: "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 race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Loanee, or any persons 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, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2. Leases: In leases the following language shall appear: "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 race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee, 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."

3. Contracts: Any contracts which Developer or Developer's heirs, executors, administrators, or assigns propose to enter into for the sale, transfer, or leasing of the Site shall contain a nondiscrimination and non-segregation clause substantially as set forth in Section 603 and in this Section. Such clause shall bind the contracting party and subcontracting party or transferee under the instrument.

E. (§605) Maintenance of Improvements.

Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after City's issuance of its Release of Construction Covenants, Developer shall be responsible for maintenance of all improvements that may exist on the Site from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in good working condition and repair, and shall keep the Site free from any accumulation of debris or waste materials. Developer shall also maintain all landscaping required pursuant to Developer's approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in accordance with and for the term of the Regulatory Agreement. Developer's further obligations to maintain the Site, and City's remedies in the event of Developer's default in performing such obligations, are set forth in the Regulatory Agreement. Developer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of City that would otherwise apply, except as specified in said Regulatory Agreement. Upon the sale of any portion of the Site, Developer (but not Developer's successor) shall be released from the requirements imposed by this Section 605, and the financial liability therefor, as to the portion of the Site conveyed.

F. (§606) Effect of Covenants.

City is a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land, whether appearing in the City Deed of Trust, the Grant Deed, or the Regulatory Agreement, for and in its own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of City shall run without regard to whether City has been, remains or is an owner of any land or interest therein in the Site, and shall be effective as both covenants and equitable servitudes against the Site. City shall have the right, if any of the covenants set forth in this Agreement which are provided for its benefit are breached, 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 may be entitled. No person or entity shall have any right to enforce the terms of this Agreement under a theory of third-party beneficiary or otherwise. The covenants running with the land and their duration are set forth in the Grant Deed and the Regulatory Agreement.

VII. (§700) SPECIAL PROVISIONS

A. (§701) Amendments to this Agreement to Comply with Housing Program Fund Requirements.

If reasonable changes to this Agreement are required by the entities providing Housing Program Funds pursuant to Section 401, the parties agree to effectuate such changes in order to be in compliance with the requirements. City Manager is authorized, subject to approval as to form by City Attorney, and without further action by City Council, to approve and execute such non-substantive changes to this Agreement and the Regulatory Agreement as may be necessary or appropriate to satisfy the requirements described herein.

B. (§ 703) Minor Amendments.

Each party agrees to consider reasonable requests for amendments to this Agreement which may be made by the other party, lending institutions, or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of City and Developer.

On behalf of City, City Manager shall have the authority to make, and to recommend to any applicable County authorities, minor amendments to this Agreement, including, but not limited to, extensions of time to Developer, so long as such actions do not materially change the Agreement or make a commitment of additional funds of City. All other changes, modifications, and amendments to this Agreement shall require the prior approval of City Council and any applicable County authorities.

VIII. (§800) DEFAULTS, REMEDIES AND TERMINATION

A. (§801) Defaults, Right to Cure and Waivers.

Subject to any Enforced Delay, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. 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 provided in this Agreement, waiver by either party of the performance of any covenant, condition or promise, shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

The Limited Partners of Developer may cure any defaults on behalf of Developer.

B. (§802) Legal Actions.

1. Institution of Legal Actions. In addition to any other rights or remedies, and subject to the requirements of Section 801, 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. Legal actions must be instituted and maintained in the Superior Court of the County of Santa Clara, State of California, in any other appropriate court in that county, or in the Federal District Court in the Northern District of California.

2. Applicable Law and Forum. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

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

as may be provided by law and shall be valid whether made within or outside of the State of California.

C. (§803) Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its 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.

D. (§804) Specific Performance.

In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the appropriateness of such remedy. In this regard, Developer specifically acknowledges that City is entering into this Agreement for the purpose of assisting in the development of the Site and not for the purpose of enabling Developer to speculate in land.

E. (§805) Right of Reacquisition During Construction.

City shall have the right, at its option, upon one hundred fifty (150) days prior written notice to both Developer and the Limited Partners of Developer, to reenter and take possession of the Site or any portion thereof with all improvements thereon and to terminate and re-vest in City the estate conveyed to Developer, if after conveyance of the estate and prior to the recordation of the Release of Construction Covenants, Developer (or his successors in interest) shall:

1. Fail to commence construction of the improvements as required by this Agreement, if such failure is in violation of the Schedule of Performance, for a period of ninety (90) days after issuance of a building permit, provided that Developer shall not have obtained an extension or postponement to which Developer may be entitled pursuant to this Agreement; or

2. Abandon or substantially suspend construction of the improvements (other than as caused by force majeure or an Enforced Delay) for a period of one hundred twenty (120) days after written notice of such abandonment or suspension from City, provided that Developer shall not have obtained an extension of time to which Developer may be entitled pursuant to this Agreement; or

3. Assign or attempt to assign this Agreement, or any rights herein, or Transfer, or suffer any involuntary Transfer of, the Site, or any part thereof, in violation of this Agreement, and such violation shall not be cured within one hundred twenty (120) days after the date of receipt of written notice thereof by City to Developer.

The right to re-enter, repossess, terminate, and re-vest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

1. Any mortgage, deed of trust, or other security interests permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holders

of such mortgages, deeds of trust, or other security interests.

Upon the re-vesting in City of possession of the Site, or any part thereof, as provided in this Section 805, City shall, pursuant to its responsibilities under state law, use its reasonable efforts to release, or resell or re-Loan the Site, as necessary and legally permitted, as the case may be, or any part thereof, as soon and in such manner as City shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by City), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to City and in accordance with the uses specified for the Site.

In the event of a resale, the proceeds thereof shall be applied as follows:

1. First, to reimburse City on its own behalf or on behalf of City for all costs and expenses incurred by City, including but not limited to, salaries to personnel, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and resale of the Site (but less any income derived by City from the Site or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site (or, in the event the Site is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments, or charges, as determined by City, as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Site or part thereof; and amounts otherwise owing City by Developer, its successors, or transferees; and

2. Second, to reimburse Developer, its successor or transferee, up to the amount equal to (i) the costs incurred for the development of the Site and for the agreed development expenses and improvements existing on the Site at the time of the re-entry and repossession, less (ii) any gains or income withdrawn or made by Developer from the Site or the improvements thereon.

3. Any balance remaining after such reimbursements shall be retained by City as its property.

To the extent that the right established in this Section involves a forfeiture, it must be strictly interpreted against City, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that City will sell the Site to Developer for development, and not for speculation in undeveloped land.

F. (§806) Option to Reacquire.

Commencing upon expiration of the Regulatory Agreement, City shall have the option ("**Option**"), but not the obligation, to reacquire the improved Site ("**Improved Site**") from Developer by City delivering written notice to Developer exercising the Option ("**Option Notice**"). Upon City's exercise of the Option, City shall, pursuant to the process specified below, pay to Developer an amount equal to the Fair Market Value of the improvements on the Improved Site but excluding any value attributable to the land as determined by an MAI-certified appraiser mutually acceptable to the parties ("**Reacquisition Price**"). The parties acknowledge and agree that the payment of the Reacquisition Price constitutes reasonable compensation to Developer for its interest in the improvements and that this right of reacquisition is intended to protect City's affordable housing

objectives and shall not constitute a forfeiture or penalty.

After determination of the Reacquisition Price, the parties shall execute a purchase agreement prepared by City containing standard provisions for a purchase agreement including, but not limited to, due diligence inspection period, assignment of all rental agreements and security deposits, proration of rents at closing, proration of real estate taxes (as applicable) and require the issuance of title insurance to the City as part of the transaction. Closing costs shall be allocated between the parties as standard in Santa Clara County.

The Reacquisition Price shall be reduced by any amounts then due and owing to City under the City Loan Documents, the PLHA Loan Documents and the CDBG Grant.

After expiration of the Regulatory Agreement, Developer may elect to provide written notice ("**Demand Notice**") to City requiring that the City must exercise the Option within twelve (12) months of receipt of the Demand Notice ("**Exercise Notice Period**"). Until the Demand Notice is provided to City, the Option shall remain in effect.

All notices under this Section must be sent to the attention of the City Manager and the City Attorney.

G. (§807) Attorneys' Fees.

If either party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties' agreement to, or performance of, this Agreement, or is made a party to any such action or proceeding by the Escrow Agent or other third party, such that the parties hereto are adversarial, the prevailing party, as between Developer and City only, in such action or proceeding, in addition to any other relief which may be Loaned, whether legal or equitable, shall be entitled to reasonable attorney's fees from the other. As used herein, the "prevailing party" shall be the party determined as such by a court of law, pursuant to the definition in Code of Civil Procedure Section 1032(a)(4), as the same may be amended or re-codified from time to time. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs, including expert witness fees, the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

IX. (§900) GENERAL PROVISIONS

A. (§901) Notices, Demands and Communications Between the Parties.

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; or by facsimile, if such facsimile is followed by a notice sent out the same day by mail; in any case, delivered to the address, addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

City:	City of Cupertino 10300 Torre Avenue Cupertino, California 95014 Attn: City Manager
Copy to:	Aleshire & Wynder, LLP 1970 Broadway, Suite 920 Oakland, CA 94612 Attn: Floy Andrews, Esq.
Owner:	Mary Avenue, L.P. c/o Charities Housing 1400 Parkmoor Avenue, Suite 190 San Jose, CA 95126 Attn: Executive Director
Copy to:	Gubb and Barshay LLP 235 Montgomery Street, Suite 1110 San Francisco, CA 94104 Attn: Lauren Fechter, Esq.

B. (§902) Nonliability of City and City Officials and Employees; Conflicts of Interest; Commissions.

1. Personal Liability. No member, official, employee, agent or contractor of City shall be personally liable to Developer in the event of any default or breach by City or for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 902 is intended to limit City's liability.

2. Financial Interest. No member, official, employee or agent of City shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

3. Commissions. Neither City, nor Developer has retained any broker or finder or has paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement. No party shall be liable for any real estate commissions, brokerage fees or finders fees which may arise from this Agreement, and each party agrees to hold the other harmless from any claim by any broker, agent, or finder retained by such party.

C. (§903) Enforced Delay: Extension of Times of Performance.

Time is of the essence in the performance of this Agreement.

Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots, floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the Site and unknown soil conditions; governmental

restrictions or priority litigation; unusually severe weather; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of City shall not excuse performance by City unless the act or failure is caused by the acts or omissions of Developer); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "**Enforced Delay**"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

The following shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform: (i) Developer's failure to obtain financing for the Project (except as provided in Section 401), and (ii) Developer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

Times of performance under this Agreement may also be extended by mutual written agreement by City and Developer. City Manager shall have the authorization to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

D. (§904) Books and Records.

1. Developer to Keep Records. Developer shall prepare and maintain all books, records and reports necessary to substantiate Developer's compliance with the terms of this Agreement or as reasonably required by City.

2. Right to Inspect. Any party shall have the right, upon not less than seventy-two (72) hours prior written notice, during normal business hours, to inspect the books and records of any other party pertaining to the Site as pertinent to the purposes of this Agreement.

3. Ownership of Documents. Subject to the rights and consents of the authors, copies of all material drawings, specifications, reports, records, documents and other materials prepared by Developer, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of Developer and are not proprietary, privileged or confidential shall be delivered to City upon request in the event of a termination of this Agreement; however, Developer shall be entitled to reimbursement from City for the cost to prepare any drawings, specifications, reports, records, documents and other materials prepared by Developer's subcontractors as a result of the exercise by City of its rights hereunder. Any drawings, specifications, reports, records, documents and other materials prepared by Developer or Developer's subcontractors and/or consultants shall be delivered without representation or warranty by Developer. City shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same. Developer makes no warranty or representation regarding the accuracy or sufficiency of such documents for any future use by City, and Developer shall have no liability therefor.

E. (§905) Assurances to Act in Good Faith.

City and Developer agree to execute all documents and instruments and to take all action,

including making a deposit of funds in addition to such funds as may be specifically provided for herein, and as may be required in order to consummate conveyance and development of the Site as herein contemplated, and shall use commercially reasonable efforts, to accomplish the closing and subsequent development of the Site in accordance with the provisions hereof. City and Developer shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

F. (§906) Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all attachments attached hereto, which are by this reference incorporated in this Agreement in their entirety.

G. (§907) Entire Agreement, Waivers and Amendments.

This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of City or Developer, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of City and Developer.

H. (§908) Severability.

In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

I. (§909) Time for Acceptance of Agreement by City.

This Agreement, when executed by Developer and delivered to City, must be authorized, executed and delivered by City, after consideration at a public meeting. After execution by Developer, this Agreement shall be considered an irrevocable offer until such time as City is authorized to execute and deliver the Agreement.

J. (§911) Execution.

1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

2. City represents and warrants that: (i) City is a municipal corporation duly organized and existing under the laws of the State of California; (ii) the execution and delivery of this Agreement have been duly authorized by all necessary actions of City, and this Agreement is executed on behalf of City by a duly authorized officer; and (iii) the execution, delivery, and performance of this Agreement by City do not violate any provision of law or any agreement to which City is a party.

3. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

4. This Agreement may be executed electronically in compliance with UETA and ESIGN using qualified third-party providers such as DocuSign and AdobeSign. However, the Note and any documents which must be recorded may not be executed electronically.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by City.

REMINDER: PARTIES NEED TO INITIAL SECTION 408.4.

DEVELOPER:

MARY AVENUE, L.P.
a California limited partnership

By: Mary Avenue Charities LLC,
a California limited liability company
General Partner

By: Charities Housing Development Corporation of Santa Clara County, a California corporation
Managing Member

By: _____
Mark J. Mikl, Executive Director

By: Lisa Caldwell
Lisa Caldwell, Secretary

APPROVED AS TO FORM:

GUBB & BARSHAY, LLP

By: Patrick Sukeforth
Patrick Sukeforth

CITY:

CITY OF CUPERTINO,
a California municipal corporation

By: Kitty Moore
Kitty Moore, Mayor

Date: February 11, 2026

ATTEST:

By: Lauren Sapudar
Lauren Sapudar, Acting
City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Floy Andrews, Interim City Attorney

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF SITE

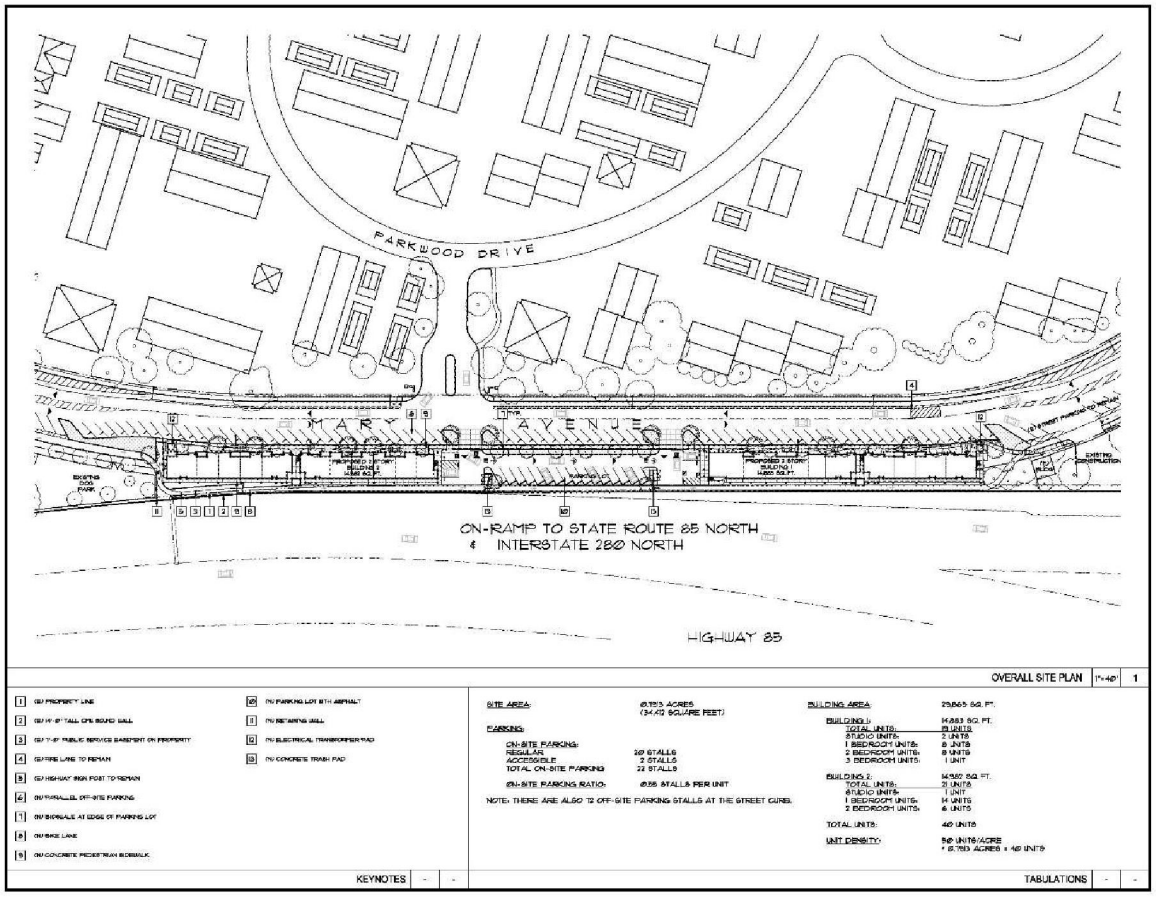
That certain real property in the City of Cupertino, County of Santa Clara, State of California legally described as follows:

All of Parcel 1, as shown on that certain Parcel Map, in the City of Cupertino, County of Santa Clara, State of California, filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on May 2, 2023, in Book 953 of Maps, Pages 53 and 54.

APN: 326-27-053

ATTACHMENT NO. 1-A

SITE MAP



OVERALL SITE PLAN | 1"=40' | 1

1 (E) PROPERTY LINE
2 (E) 6'-0" TALL CMU SOUND WALL
3 (E) 7'-0" PUBLIC SERVICE EASEMENT ON PROPERTY
4 (E) FIRE LANE TO REMAIN
5 (E) HIGHWAY SIGN POST TO REMAIN
6 (N) PARALLEL OFF-SITE PARKING
7 (N) SIDEWALK AT EDGE OF PARKING LOT
8 (N) BIKE LANE
9 (N) CONCRETE PEDESTRIAN SIDEWALK
10 (N) PARKING LOT WITH ASPHALT
11 (N) RETAINING WALL
12 (N) ELECTRICAL TRANSFORMER PAD
13 (N) CONCRETE TRASH PAD

KEYNOTES

SITE AREA: 0.1915 ACRES (34,412 SQUARE FEET)

PARKING:
ON-SITE PARKING:
REGULAR 20 STALLS
ACCESSIBLE 2 STALLS
TOTAL ON-SITE PARKING 22 STALLS

ON-SITE PARKING RATIO: 0.55 STALLS PER UNIT

NOTE: THERE ARE ALSO 12 OFF-SITE PARKING STALLS AT THE STREET CURB.

BUILDING AREA: 25,865 SQ. FT.

BUILDING 1: 14,883 SQ. FT.
TOTAL UNITS: 23 UNITS
STUDIO UNITS: 2 UNITS
1 BEDROOM UNITS: 8 UNITS
2 BEDROOM UNITS: 8 UNITS
3 BEDROOM UNITS: 1 UNIT

BUILDING 2: 10,982 SQ. FT.
TOTAL UNITS: 21 UNITS
STUDIO UNITS: 1 UNIT
1 BEDROOM UNITS: 14 UNITS
2 BEDROOM UNITS: 6 UNITS

TOTAL UNITS: 44 UNITS

UNIT DENSITY: 56 UNITS/ACRE
* 0.785 ACRES x 44 UNITS

TABULATIONS

MARY AVENUE AFFORDABLE HOUSING

CHARITIES HOUSING

MARY AVENUE
CUPERTINO, CALIFORNIA

KO Architects, Inc.
600 High Street, Suite 1
Palo Alto, CA 94301
p.650.833.1900

REGISTERED ARCHITECT
C24,487
7.31.25
STATE OF CALIFORNIA

REVISION

PROJECT NO. 24-485
DATE JULY 24, 2024
DRAWN BY LOR
SCALE 1" = 40'-0"

OVERALL SITE PLAN

SHEET
AS1.0

ATTACHMENT NO. 2

SCOPE OF DEVELOPMENT

A. PROJECT CONCEPT

The term "Project" shall mean the residential improvements required to be constructed by Developer on the Site including, but not limited to, the construction of buildings, glass and concrete work, landscaping, parking areas, and related improvements. Developer will construct a 2-story 40 unit (39 affordable units + 1 Manager's Unit) development as an affordable apartment community construction with 20 parking places.

The Residential Units will consist of:

- Three (3) studio units of approximately 450 square feet
- Twenty-two (22) one-bedroom/one-bathroom units of approximately 560 square feet;
- Fourteen (14) two-bedroom/one-bathroom units of approximately 750 square feet; and
- One (1) three-bedroom/two-bathroom unit of approximately 950 square feet.

The Residential Units will be restricted for use by Low, Very Low, and Extremely Low Income Households (excluding one (1) unit restricted as a Manager's Unit for rent to a Qualified Manager) rental of the restricted Residential Units shall be administered as follows:

- 17 of the Residential Units shall be restricted to rent to Extremely Low Income Households (3 studio and 14 one-bedroom),
- 15 of the Residential Units shall be restricted to rent to Very Low Income Households (4 one-bedroom and 11 two-bedroom), and
- 7 of the Residential Units shall be restricted to rent to Low Income Households (4 one-bedroom and 3 two-bedrooms).

The acquisition and development costs for the Project shall be funded from a variety of sources, as further described in the Project Budget attached to this Attachment as Exhibit "A" ("**Project Budget**").

B. SITE DESCRIPTION

The Site consists of the real property as legally described on Attachment No. 1 and depicted on the Site Map attached as Attachment No. 1-A.

C. DEMOLITION AND CLEARANCE

Developer will complete demolition of all the improvements on the Site. Developer shall be responsible for all on-site work and improvements, including, but not limited to the following:

1. Developer shall be responsible for all utility relocation, and other work necessary to prepare the Site for the improvements contemplated by the DDA, and shall be responsible for all construction of the Residential Units in accordance with the approved plans thereof.

2. Developer shall submit a drainage plan with hydrology and hydraulic calculations, if requested, showing building elevations and drainage patterns and slopes, for review and approval by

the Director of Community Development and the Director of Public Works. All required drainage/grading shall be provided in accordance with approved plans.

D. SITE PREPARATION

Developer shall, at its sole cost and expense, perform or cause to be performed grading plan preparation, fine grading and related compaction, and other site preparation as necessary for construction of the Project, as approved by the City Engineer. Plans shall be prepared by a licensed civil engineer in good standing and subject to the approval of the City Engineer.

Developer shall, at its sole cost and expense, scarify, over-excavate, cut, fill, compact, rough grade, and/or perform all grading as required pursuant to an approved grading plan(s) to create finished lots, building pads, and appropriate rights-of-way configurations necessary to develop the Project described herein.

E. PROJECT DESIGN

1. DESIGN PROCESS

Developer and its representatives, including its architect and engineer, shall work with City and Authority staff to develop and execute the architectural concept, architectural drawings, site plan, tentative tract map, grading plan, off-site improvement plans, and related drawings and documents consistent with Planning Commission and Authority direction pursuant to the Cupertino Municipal Code.

2. ARCHITECTURAL CONCEPT

The Project shall be designed and constructed as an integrated development in which the buildings shall have architectural excellence. The improvements to be constructed on the Site shall be of high architectural quality, shall be well landscaped, and shall be effectively and aesthetically designed. The shape, scale of volume, exterior design, and exterior finish of each building, structure, and other improvements must be consistent with, visually related to, physically related to, and an enhancement to each other and, to the extent reasonably practicable, to adjacent improvements existing or planned within the Project Area. Developer's plans, drawings, and proposals submitted to Authority for approval shall describe in reasonable detail the architectural character intended for the Project. The open spaces between buildings on the residential portion of the Site, where they exist, shall be designed, landscaped and developed with the same degree of excellence.

3. SITE WORK

The Project shall substantially conform to the site and building plans approved pursuant to Subsection A above and with the Site Map attached to the Agreement as Attachment No. 1. It shall be the responsibility of Developer, the architect and the contractor to develop the Project consistent with the aforementioned plans. Any substantial modification to the approved site or building plans, as determined by the Director of Community Development, shall be referred to the Planning Commission for review and approval through a conformity report. Developer shall be responsible for the construction and installation of all improvements to be constructed or installed on the Site, including but not limited to the following:

a. Residential Units

Construction of a residential complex with buildings not to exceed two (2) stories,

containing a maximum of forty (40) units as described in Section A above.

b. Parking

Developer shall develop on-site parking areas for the Site consisting of not less than twenty (20) parking spaces. The design, construction, and number of parking spaces shall be in accordance with the Cupertino Municipal Code. Construction of the parking areas shall include installation of necessary drainage systems, paving, required landscaping and irrigation, striping and labeling, all in accordance with the Cupertino Municipal Code and approved plans.

c. Landscaping

Developer shall install and maintain on-site landscaping and automatic irrigation pursuant to approved plans consistent with the Cupertino Municipal Code.

d. Lighting

Developer shall install and maintain on-site lighting in a manner consistent the approved lighting and electrical plans. The design of light standards and fixtures shall be subject to the approval of the Director of Community Development.

e. Trash Storage

Trash storage areas shall be provided, of sufficient size to ensure containment of all solid waste materials generated from the Site in trash disposal and recycling bins. Adequate access shall be provided to the enclosures for refuse pickup.

f. Signs

A sign program shall be submitted to the City for approval. Building and, where necessary, electrical permits shall be obtained prior to installation, painting or erection of signs. Signs shall be designed, installed, and maintained in a manner consistent with the approved Site Plan and sign program.

4. UNDERGROUNDING UTILITIES

All new utility service connections servicing the Site shall be installed underground, including connections to facilities within the public right-of-way.

5. MECHANICAL EQUIPMENT

On-site mechanical equipment, whether roof or ground mounted, shall be completely screened from public view. Screening material shall be constructed of materials which coordinate with the overall architectural theme. Where public visibility will be minimal, the Director of Community Development may permit use of landscaping to screen ground mounted equipment.

6. APPLICABLE CODES

All improvements shall be constructed in accordance with the California Building Code (with Cupertino modifications), the County of Santa Clara Fire Code (with any Cupertino modifications), the Cupertino Municipal Code, and current City standards.

7. OFFSITE IMPROVEMENTS

Pursuant to the Agreement, Developer shall perform, or cause to be performed, all offsite improvements required by law or as a condition to any governmental or local approval or permit,

including but not limited to the following:

a. Restoring those streets adjacent to the Site, if any, that undergo utility trenching needed to provide house connections to service the Site. The streets shall be restored to the condition prior to construction, with materials acceptable to the Director of Public Works.

b. Developer shall be responsible for the repair and protection of off-site improvements during construction of the on-site improvements. Any off-site improvements found damaged shall be reconstructed or provided for by Developer to the satisfaction of the Director of Public Works.

c. Developer shall plant or provide for street trees adjacent to the Site, including tree root barriers, to the satisfaction of the Director of Public Works. All required street trees, and any landscaping and sprinkler systems, shall be maintained by Developer and/or successors.

d. Developer shall provide or construct sidewalks, as shown on the approved Conceptual Plans, to the satisfaction of the Director of Public Works.

EXHIBIT "A" TO SCOPE OF DEVELOPMENT

PROJECT BUDGET

(To be attached prior to execution)

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

	Item To Be Performed	Time for Performance	Agrmt Reference
1.	Developer executes and delivers 3 executed copies of DDA to City	Prior to approval by City.	
2.	City holds public meeting to approve or disapprove DDA	Expected to be held on February 3, 2026 2026	
3.	Parties open Escrow	Within 10 days after the Effective Date	
4.	Developer shall apply to all necessary funding sources (Housing Program Funds).	TCAC: April 15, 2026	
5.	Developer shall demonstrate to the reasonable satisfaction of City evidence of awards, commitments or reservations of Housing Program Funds.	After the end of the applicable TCAC funding cycle	
6.	Developer secures all necessary financial commitments and provides City with evidence of financial capability	Within 90 days after the end of the applicable TCAC funding cycle	
7.	City approves or disapproves financial commitment and lender	Within 30 days after receipt by City of information from Developer per Item 7	
8.	City delivers Preliminary Title Reports to Developer	Within 30 days after opening of Escrow	
9.	Developer approves or disapproves title exceptions	Within 30 days after delivery of Preliminary Title Report to Developer	
10.	City delivers notice to Developer as to whether it will cure disapproved exceptions	Within 15 days after receipt of Developer's notice	
11.	Developer submits Marketing Program to City	Within 120 days of the Effective Date.	
12.	City approves or disapproves Site Plan with conditions of approval.	By submittal of completed tax credit application to applicable agency.	

	Item To Be Performed	Time for Performance	Agrmt Reference
13.	Developer to submit building plans for Plan Check. Developer responsible for payment of applicable fees.	Prior to issuance of building permits.	
14.	Escrow Agent gives notice of fees, charges, and costs to close Escrow	One (1) week prior to expected Closing date	
15.	Deposits into Escrow by City:		
	a) Executed Deed	On or before 1:00 p.m. on the last business day preceding the Closing Date	
	b) Estoppel Certificate	On or before 1:00 p.m. on the last business day preceding the Closing Date	
	c) Payment of City's share of Escrow Costs.	On or before 1:00 p.m. on the last business day preceding the Closing Date	
	d) Taxpayer ID Certificate	Prior to Closing Date	
	e) FIRPTA Certificate	Within 15 days after opening	
	f) Two (2) copies of the PLHA Loan Agreement, if applicable	Prior to Closing Date	
	g) Two (2) copies of the CDBG Grant Agreement	Prior to Closing Date	
16.	Deposits into Escrow by Developer or on behalf of Developer:		
	a) City Note & PLHA Note	On or before 1:00 p.m. on the last business date preceding the Closing Date	
	b) City Deed of Trust & PLHA Deed of Trust	On or before 1:00 p.m. on the last business date preceding the Closing Date	
	c) Two (2) copies of the PLHA Loan Agreement, if applicable, executed by Developer	On or before 1:00 p.m. on the last business date preceding the Closing Date	
	d) Two (2) copies of the CDBG Grant Agreement, executed by Developer	On or before 1:00 p.m. on the last business date preceding the Closing Date	

	Item To Be Performed	Time for Performance	Agrmt Reference
	e) Estoppel Certificate	On or before 1:00 p.m. on the last business date preceding the Closing Date	
	f) Regulatory Agreement (executed by Developer and City)	On or before 1:00 p.m. on the last business date preceding the Closing Date	
	g) Payment of Developer's Share of Escrow Costs	On or before 1:00 p.m. on the last business date preceding the Closing Date	
	h) Certificates evidencing insurance	Prior to Closing	
	i) Taxpayer ID Certificate	Prior to Closing Date	
	j) PCOR	Prior to Closing.	
	k) Acceptance of Grant Deed	On or before 1:00 p.m. on the last business date preceding the Closing Date	
17.	City or Developer, as case may be, may cure any condition to closing disapproved or waived or may cure any default	Within 30 days after date established therefor, or date of breach, as the case may be	
18.	Close of Escrow for the Site recordation and delivery of documents	As soon as possible, but not later than date that Developer secures financing approved by City under Item 9 & Item 10.	
19.	Developer commences construction of Improvements	Within 30 days of receipt of building permits.	
20.	Developer completes construction of improvements on the Site.	Within 24 months after issuance of building permits.	
21.	City issues Release of Construction Covenants for the Site.	Within 30 days of written request by Developer, and Developer's satisfactory completion of all improvements on the Site.	
22.	Developer shall achieve at least a ninety percent (90%) lease-up rate of the Project	Not later than 6 months after completion of construction on the Site	

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the

text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and City. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager shall have right to approve extensions of time without City Council action not to exceed a cumulative total of one hundred eighty (180) days as provided in Section 903.

ATTACHMENT NO. 4

GRANT DEED

FREE RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

Mary Avenue L.P.
1400 Parkmoor Avenue Suite 190
San Jose, CA 951226
Attn: ____

APN: 326-27-053
THE UNDERSIGNED GRANTOR DECLARES that the documentary transfer tax (computer on full value) is $_____

Space above reserved for Recorder's Office

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, CITY OF CUPERTINO, a municipal corporation ("**Grantor**"), grants to MARY AVENUE, L.P., a California limited partnership ("**Grantee**"), the real property ("**Site**") legally described in Exhibit "A" attached hereto and incorporated herein by this reference.

As consideration for this conveyance, the Grantor covenants by and for itself and any successors in interest for the benefit of the Grantee as follows:

1. Governing Documents. The Site is conveyed pursuant to that certain Disposition and Development Agreement ("DDA") entered into between and between Grantor and Grantee dated _____, 202__. Grantee covenants and agrees for itself and its successors and assigns to use, operate and maintain the Site in accordance with the DDA and this Deed. In the event of any conflict between this Grant Deed and the DDA, the provisions of the DDA shall control.

2. Regulatory Agreement. Grantee covenants and agrees for itself and its successors and assigns to its interest in the Site that it shall abide by all of the terms listed in that certain the Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions of even date herewith ("**Regulatory Agreement**") recorded concurrently with this Grant Deed for so long as the Regulatory Agreement is in effect in accordance with its terms.

3. Use of Site. Grantee covenants that Grantee may only use the Site for residential purposes as consistent with the time period and other terms, covenants and conditions set forth in the DDA and the Regulatory Agreement, by which Grantee has agreed to be bound for so long as the Regulatory Agreement is in effect according to its terms. Grantee shall have no right to subdivide, separate, or partition the Site except as provided in the DDA. Breach of the terms, covenants, conditions, and provisions of the DDA or Regulatory Agreement shall be a material breach of this covenant.

4. Encumbrances Prohibited. Prior to issuance of the Release of Construction Covenants by the Grantor as provided in the DDA, the Grantee shall not place or suffer to be placed on the Site any lien or encumbrance other than mortgages, deeds of trust, sales and leases back or any other form of conveyance required for financing of the acquisition of the Site, the construction of improvements on the Site, and any other expenditures necessary and appropriate to develop the Site, except as

specifically provided in the DDA and attachments thereto.

5. Reservation. Grantor does not reserve or convey to itself any easements or public rights of way on the Site.

6. Non-Discrimination. Grantee covenants that except for the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA and Regulatory Agreement, there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with references to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

7. Form of Nondiscrimination Clauses in Agreements. Subject to the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, which may modify the following nondiscrimination clauses, the following shall apply: Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

a. Deeds: In deeds the following language shall appear: "The grantee herein covenants by and for itself, its 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 race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. Leases: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

c. Contracts: In contracts the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall

the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The foregoing covenants shall remain in effect in perpetuity.

8. Mortgage Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

9. Covenants to Run With the Land. The covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, and shall be binding upon Grantee, its heirs, successors and assigns to the Site, whether their interest shall be fee, easement, leasehold, beneficial or otherwise.

10. Repurchase Option. Grantor has the right to reacquire the improved Site pursuant to DDA Section 806.

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed on its behalf by its respective officers duly authorized, this _____ day of _____, 202_.

GRANTOR:

CITY OF CUPERTINO,
a California municipal corporation

By: _____
Kitty Moore, Mayor

ATTEST:

By: _____
Lauren Sapudar, Acting
City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Floy Andrews, Interim City Attorney

ACCEPTANCE OF GRANT DEED

By its acceptance of this Grant Deed, Grantee hereby agrees as follows:

1. Grantee expressly understands and agrees that the terms of the Grant Deed shall be deemed to be covenants running with the land and shall apply to all of the Grantee's successors and assigns.

2. The provisions of this Grant Deed are hereby approved and accepted.

GRANTEE:

MARY AVENUE, L.P.
a California limited partnership

By: Mary Avenue Charities LLC,
a California limited liability company
General Partner

By: Charities Housing Development Corporation of
Santa Clara County, a California corporation
Managing Member

By: _____
Mark J. Mikl, Executive Director

By: _____
Lisa Caldwell, Secretary

EXHIBIT A

LEGAL DESCRIPTION OF SITE

That certain real property in the City of Cupertino, County of Santa Clara, State of California legally described as follows:

All of Parcel 1, as shown on that certain Parcel Map, in the City of Cupertino, County of Santa Clara, State of California, filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on May 2, 2023, in Book 953 of Maps, Pages 53 and 54.

APN: 326-27-053

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)
) ss.
COUNTY OF _____)

On _____, 202_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

SEAL:

ATTACHMENT NO. 5

CITY NOTE

PROMISSORY NOTE SECURED BY DEED OF TRUST

$ 3,000,000 _____, 202_ ("**Note Date**")
("**Loan Amount**")

FOR VALUE RECEIVED, the undersigned ("**Maker**") hereby promises to pay to the order of the CITY OF CUPERTINO, a municipal corporation ("**Holder**" or "**City**"), at a place designated by Holder, the principal sum of THREE MILLION DOLLARS ($3,000,000) ("**Note Amount**"), plus accrued interest, or such lesser amount which shall from time to time be owing hereunder pursuant to the terms hereof. The principal sum represents the amount due to Holder pursuant to the terms and conditions set forth in the DDA (as defined below) pertaining to Maker's acquisition and development of certain real property defined in the DDA as the "**Site**."

Reference is also made to the following additional agreements and documents involving Maker and Holder and/or pertaining to the Site:

(i) Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith made by and among Maker as trustor, Holder as beneficiary, and First American Title Insurance Company as trustee, and recorded on _____, 202__ as Instrument No. _____, in the Office of the Santa Clara County Recorder ("**Deed of Trust**"). The Deed of Trust secures repayment of this Note.

(ii) Regulatory Agreement and Declaration of Covenants and Restrictions of even date herewith by and between Maker as Owner and Holder as City for the benefit of Holder, and recorded on _____, 202__, as Instrument No. _____ in the Office of the Santa Clara County Recorder ("**Regulatory Agreement**").

(iii) Disposition and Development Agreement dated _____, 202__ by and between Maker as Developer and Holder as City ("**DDA**").

The Regulatory Agreement and the DDA are referred to herein collectively as the "**City Agreements**" and individually as an "**City Agreement**." The City Agreements are incorporated herein as though fully set forth. The City Agreements are not secured by the Deed of Trust.

Except as otherwise provided herein, the defined terms used in this Note shall have the same meaning as set forth in the DDA.

1. Purpose of Loan. The loan evidenced by this Note is a loan for the purpose of developing the Project on the Site in accordance with the City Agreements.

2. Principal Amount. The principal amount of this loan shall be of THREE MILLION DOLLARS ($3,000,000). Interest shall accrue on the outstanding principal amount at the simple rate

of three percent (3%) per annum.

3. Term of Note; Repayment.

.

3.1 Maker shall be obligated to repay the principal amount of this Note and the accrued interest, without set off or deduction, by paying to Holder, on each April 1st in which there was positive Net Cash Flow (as defined below) for the calendar year, or portion thereof, ending on the immediately preceding December 31, the City's Pro Rata Share (as defined below) of fifty percent (50%) of that year's Net Cash Flow ("**Annual Payments**"). The first such repayment under this Section 3.1 shall be due on the first April 1 in the calendar year following the issuance of the first Certificate of Occupancy, and the last payment shall be due on April 1st fifty-five (55) years later ("**Maturity Date**"). Notwithstanding the foregoing, this Note shall be fully due and payable on the Maturity Date.

3.1.1 For purposes of this Section 3.1, the term "**Net Cash Flow**" means "**Cash Flow**" (as defined below), if any, less asset or partnership management fees in an amount up to, but not collectively exceeding, on an annual basis, (i) Twenty Five thousand Dollars ($25,000) increased annually by the increase in the Consumer Price Index for the same period ("**CPI**"); (ii) property management fees shall not exceed Eight Percent (8%) of effective gross income, and (iii) any tax credit adjuster payments due to the limited partner of Maker pursuant to the terms of Maker's partnership agreement. The term "**Cash Flow**" means: (A) all income derived by Maker from the Site including, without limitation, all tenant rent, all rental subsidy payments made by governmental agencies, and income from any source related to Maker's owning, leasing, maintenance, and operation of the Site and Improvements ("**Gross Income**"); less (B) (i) expenses actually and reasonably incurred by Maker in owning, leasing, operating, maintaining, and repairing the Site (excluding asset or partnership management fees, insurance proceeds, and any costs or expenses paid or reimbursed by third parties), including without limitation, insurance, taxes, interest actually paid to tenants on funds submitted by tenants and held by Maker in the form of security deposits, maintenance and repair expenses for the Site, capital improvements not funded from the Capital Replacement Reserve (the Capital Replacement Reserve shall be the first source of funds used by Maker for capital improvements to the Site), management costs, the Developer Fee, and cost of debt service on loans secured by deeds of trust which are recorded against the Site (x) with a higher priority than the Deed of Trust, and (y) with a lower priority than the Deed of Trust if approved in advance by the City; (ii) the monthly property management fee authorized by the Management Contract; (iii) Resident services expenses in an amount not to exceed on an annual basis Twenty Thousand Dollars ($20,000), increased annually by the CPI; and (iv) the net amount of deposits, if any, into the Capital Replacement Reserve and any required operating reserve funding deemed reasonably necessary by the general partner of Maker or otherwise required by any Project lender or tax credit equity investor; Cash Flow shall be calculated on an accrual basis according to generally accepted accounting principles.

3.1.2 For purposes of Section 3.1.1, the term "**Capital Replacement Reserve**" means an annual amount not less than Three Hundred Dollars ($300) per unit per year increased by CPI or otherwise required by any Project lender or tax credit equity investor. The Capital Replacement Reserve shall be the first source of funds used by Maker for capital improvements to the Site.

3.2 For purposes of this Section 3.1, the term "**City's Pro Rata Share**" means a fraction, the numerator of which is the Loan Amount, and the denominator of which is the sum of (i) the Loan

Amount, (ii) the principal balance of the PLHA Loan, and (iii) the principal balance of all Approved Public Agency Loans.

3.3 Concurrently with the Annual Payments, Maker shall deliver audited financial statements for the applicable period for the Project. Upon Holder's request, Maker shall provide such additional information as Holder may reasonably request.

3.4 Any payments made by Maker in payment of this Note shall be applied in the following order: (i) first to any amounts due to Holder other than interest and principal; (ii) second, in payment of interest, if any, then accrued and due on the unpaid principal balance under this Note; and (iii) lastly, to reduction of the principal balance of this Note.

3.5 This Note may be prepaid in whole or in part at any time without penalty.

4. Default; Cross-Default; Acceleration.

4.1 In addition to Maker's failure to timely perform the requirements of this Note, Maker shall also be in default of this Note if Maker, without the prior written approval of Holder, which approval may be given or withheld in Holder's sole and absolute discretion, refinances any outstanding loan or note secured by the Site for an amount greater than the sum of (i) the then-outstanding principal balance of such secured loan(s) or note(s), plus (ii) the reasonable costs of such refinance transaction, which shall not include loan points or origination fees greater than two percent (2%) of the then-outstanding principal balance of such secured loan(s) or note(s). Notwithstanding the foregoing, Maker shall not be in default of this Note and need not seek approval of Holder in refinancing any outstanding loan or note secured by the Site if all net proceeds from such refinance are applied against the unpaid balance of this Note. Holder is not obligated to subordinate this Note except in compliance with the applicable requirements set forth in the DDA.

4.2 Default by Maker of this Note or of any of the City Agreements, shall constitute a default of this Note and all of the City Agreements.

4.3 In the event Maker fails to perform hereunder or under any of the City Agreements, for a period of twenty (20) days after the date of written notice from Holder that such performance was due, Maker shall be in default of this Note. Prior to exercising any of its remedies hereunder, City shall give Maker written notice of such default, and Maker shall thereafter have ten (10) days to cure such default; provided, however, that if the default hereunder is solely as a result of a default under any of the City Agreements, the default, notice, and cure provisions of the applicable City Agreement shall apply. If Maker cures a default under an City Agreement within the cure period set forth in the applicable City Agreement, Maker shall be deemed to have also cured that default under this City Loan. If Maker does not cure a default under any of the City Agreements within the cure period set forth in the applicable City Agreement, Maker shall be deemed in default under all of the City Agreements and under this Note. Notwithstanding the foregoing, or anything contained herein or in the City Agreements to the contrary, if any default is incapable of being cured within ten (10) days after notice from City (or such other period as may be set forth in the applicable City Agreement), then Maker shall not be in default under this Note or the applicable City Agreement to the extent that Maker commences to cure such default within such period and thereafter diligently pursues such cure to completion. In the event Maker is deemed in default under this Note, and has not cured the default within the time set forth in the applicable notice of default, Holder may, at its option, declare this

Note and the entire obligations hereby evidenced immediately due and payable and collectible then or thereafter as Holder may elect, regardless of the date of maturity, and notice of the exercise of said option is hereby expressly waived by Maker. The cure of any default tendered by a limited partner in Maker shall be accepted by City on the same basis as any cure tendered by Maker.

5. Collection Costs; Attorneys' Fees. If, because of any event of default under this Note or any of the City Agreements, any attorney is engaged by Holder to enforce of defend any provision of this instrument, whether or not suit is filed hereon, then Maker shall pay upon demand reasonable attorneys' fees, expert witness fees and all costs so incurred by Holder together with interest thereon until paid at the applicable rate of interest payable hereunder, as if such fees and costs had been added to the principal owing hereunder.

6. Waivers by Maker. Maker and all endorsers, guarantors and persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note and any and all other notices or matters of a like nature, and consent to any and all renewals and extensions near the time of payment hereof and agree further that at any time and from time to time without notice, the terms of payment herein may be modified or the security described in any documents securing this Note released in whole or in part, or increased, changed or exchanged by agreement between Holder and any owner of the premises affected by said documents securing this Note, without in any way affecting the liability of any party to this Note or any persons liable or to become liable with respect to any indebtedness evidenced hereby.

7. Severability. The unenforceability or invalidity of any provision or provisions of this Note as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other provisions or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.

8. Notices. All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Note shall be in writing and shall be given by personal delivery, certified mail, return receipt requested, or overnight guaranteed delivery service and addressed as follows:

Holder or City:	City of Cupertino 10300 Torre Avenue Cupertino, California 95014 Attn: City Manager
Copy to:	Aleshire & Wynder, LLP 1970 Broadway, Suite 920 Oakland, CA 94612 Attn: Floy Andrews, Esq.
Maker:	Mary Avenue, LP c/o Charities Housing 1400 Parkmoor Avenue, Suite 190 San Jose, CA 95126 Attn: Executive Director

Copy to:	Gubb and Barshay LLP 235 Montgomery Street, Suite 1110 San Francisco, CA 94104 Attn: Lauren Fechter, Esq.
With copies to Maker's Limited Partner:	_____ _____ _____

Notices shall be effective upon the earlier of receipt or refusal of delivery. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent pursuant to this Note.

Notwithstanding anything to the contrary contained in this Note, Holder agrees that any cure of any default made or tendered by Maker's limited partner shall be deemed to be a cure by Maker and shall be accepted or rejected on the same basis as if made or tendered by Maker. Copies of all notices which are sent to Maker shall also be sent to Maker's limited partner as specified above. This obligation may not be changed by Maker but only upon written notice to Holder by the limited partner.

9. Modifications. Neither this Note nor any term hereof may be waived, amended, discharged, modified, changed or terminated orally; nor shall any waiver of any provision hereof be effective except by an instrument in writing signed by Maker and Holder. No delay or omission on the part of Holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note.

10. No Waiver by Holder. No waiver of any breach, default or failure of condition under the terms of this Note shall be implied from any failure of the Holder of this Note to take, or any delay be implied from any failure by the Holder in taking action with respect to such breach, default or failure from any prior waiver of any similar or unrelated breach, default or failure.

11. Usury. Notwithstanding any provision in this Note, the total liability for payment in the nature of interest shall not exceed the limit imposed by applicable laws of the State of California.

12. Assignability. Holder may freely transfer, assign, or encumber Holder's interest in this Note in any manner, at Holder's sole discretion.

13. Governing Law. This Note has been executed and delivered by Maker in the State of California and is to be governed and construed in accordance with the laws thereof.

14. Time of Essence. Time is of the essence in the performance of the obligations and provisions set forth in this Note.

15. Non-Recourse. Notwithstanding anything to the contrary herein contained, (i) the liability of Maker shall be limited to its interest in the Site and any other security for this Note and any rents, issues, and profits arising from the Site and, in addition, with respect to any obligation to hold and apply insurance proceeds, proceeds of condemnation or other monies hereunder, any such monies received by it to the extent not so applied in accordance with the terms of this Note; (ii) no other assets of Maker shall be affected by or subject to being applied to the satisfaction of any liability

which Maker may have to Holder or to another person by reason of this Note; and (iii) any judgment, order, decree or other award in favor of Holder shall be collectible only out of, or enforceable in accordance with, the terms of this Note by termination or other extinguishment of Maker's interest in the Site. Notwithstanding the foregoing, it is expressly understood and agreed that the aforesaid limitation on liability shall in no way restrict or abridge Maker's continued personal liability for: (A) fraud or willful or negligent misrepresentation made by Maker in connection with this Note or any of the City Agreements; (B) misapplication of (a) proceeds of insurance and condemnation or (b) rent received by Maker under rental agreements entered into for any portion of the Site after default of the Note; (C) the retention by Maker of all advance rentals and security deposits of tenants not refunded to or forfeited by such tenants; (D) the indemnification undertakings of Maker under the City Agreements, provided, however, nothing herein shall be deemed to obligate Maker to repay any portion of the Loan evidenced hereby as a result of any such indemnification; and (E) material waste by Maker with respect to the Site.

16. <u>Secured by Deed of Trust</u>. This Note is secured by the Deed of Trust.

IN WITNESS WHEREOF, Maker has executed this Note as of the date first above written.

MAKER:

MARY AVENUE, L.P.,
a California limited partnership

By: Mary Avenue Charities LLC,
a California limited liability company
General Partner

By: Charities Housing Development
Corporation of Santa Clara County, a
California corporation
Managing Member

By: _____
Mark J. Mikl, Executive Director

By: _____
Lisa Caldwell, Secretary

ATTACHMENT NO. 6

CITY DEED OF TRUST

WHEN RECORDED MAIL TO:

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, CA 95104
Attention: City Manager

APNs. 326-27-053

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEE PER GOV. CODE § 6103

DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

NOTE: RIDER ATTACHED TO THIS DEED OF TRUST ("**RIDER**") CONTAINS ADDITIONAL TERMS INCLUDING SECURITY AGREEMENT AND FIXTURE FILING.

This DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Deed of Trust**"), is made _____, 20__ between MARY AVENUE, L.P., a California limited partnership (**"Trustor")**, whose address is 1400 Parkmoor Avenue, Suite 190, San Jose, CA 95126, in favor of CITY OF CUPERTINO, a municipal corporation (**"Beneficiary")**, and FIDELITY NATIONAL TITLE INSURANCE COMPANY, a corporation (**"Trustee").**

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, Trustor's estate in that real property in the City of Cupertino, County of Santa Clara, State of California, described as set forth on EXHIBIT "A" attached hereto ("**Property**") together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of $3,000,000 with interest thereon according to the terms of that certain Promissory Note Secured by Deed of Trust of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein; (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and (4) all additional obligations specified in the Rider.

To protect the security of this Deed of Trust, and with respect to the Property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5 Book 1964, Page 149774				

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at the address hereinbefore set forth.

TRUSTOR:

MARY AVENUE, L.P.
a California limited partnership

By: Mary Avenue Charities LLC,,
a California limited liability company
General Partner

By: Charities Housing Development Corporation of Santa Clara County, a California corporation
Managing Member

By: _____
Mark J. Mikl, Executive Director

By: _____
Lisa Caldwell, Secretary

DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

4) To pay: at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary of Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same is such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from the date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement

hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or be a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and Authority, including pledges, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

DO NOT RECORD REQUEST FOR FULL RECONVEYANCE

TO _____, TRUSTEE:

The undersigned is the legal owner and Authority of the note or notes and of all indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, an all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

_____

_____

Please mail Deed of Trust,
Note and Reconveyance to _____

Do Not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

RIDER TO DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS RIDER TO DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Rider**") is executed this ___day of _____, 202__, by and Mary Avenue, L.P., a California limited partnership ("**Trustor**") in favor of the City of Cupertino, a municipal corporation ("**Beneficiary"),** the same parties to that certain "Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing" of even date herewith to which this Rider is attached. This Rider is made a part of and is incorporated into said Deed of Trust. This Rider shall supersede any conflicting term or provision of the form Deed of Trust to which it is attached.

Reference is made to the following agreements and documents: (i) Promissory Note made by Trustor as "Maker" in favor of Beneficiary as "City" of even date herewith, the repayment of which is secured by this Deed of Trust ("**Note**"); (ii) that certain Disposition and Development Agreement by and between Trustor as "Developer" and Beneficiary as "City" dated _____, 202_, providing for Trustor's purchase and development of the Property (referred to therein as the "**Site**") ("**DDA**"); and (iii) that certain Regulatory Agreement between Trustor as "Developer" of even date herewith ("**Regulatory Agreement**"). The Note, DDA, and Regulatory Agreement are collectively hereinafter referred to as the "**Loan Documents**".

The parties hereto agree:

1. Property. The estate subject to this Deed of Trust is Trustor's fee estate in the real property legally described in the Deed of Trust ("**Property**"). In addition, Trustor grants to beneficiary a security interest in all of Trustor's rights, title, and interest in and to the following:

(a) All present and future inventory and equipment, as those terms are defined in the California Commercial Code, and all other present and future personal property of any kind or nature whatsoever, now or hereafter located at, upon or about the Property or used or to be used in connection with or relating or arising with respect to the Property and/or the use thereof or any improvements thereto, including without limitation all present and future furniture, furnishings, fixtures, goods, tools, machinery, plumbing and plumbing material and supplies, concrete, lumber, hardware, electrical wiring and electrical material and supplies, heating and air conditioning material and supplies, roofing material and supplies, window material and supplies, doors, paint, drywall, insulation, cabinets, ceramic material and supplies, flooring, carpeting, appliances, fencing, landscaping and all other materials, supplies and property of every kind and nature.

(b) All present and future accounts, general intangibles, chattel paper, contract rights, deposit accounts, instruments and documents as those terms are defined in the California Commercial Code, now or hereafter relating or arising with respect to the Property and/or the use thereof or any improvements thereto, including without limitation: (i) all rights to the payment of money, including loan escrow proceeds, if applicable, arising out of the sale or other disposition of all or any portion of the Property; (ii) all architectural, engineering, design and other plans, specifications and drawings relating to the development of the Property and/or any construction

thereon; (iii) all use permits, occupancy permits, construction and building permits, and all other permits and approvals required by any governmental or quasi-governmental authority in connection with the development, construction, use, occupancy or operation of the Property; (iv) any and all agreements relating to the development, construction, use, occupancy and/or operation of the Property between Trustor and any contractor, subcontractor, project manager or supervisor, architect, engineer, laborer or supplier of materials; (v) all lease, rental or occupancy agreements and payments received thereunder; (vi) all names under which the Property is now or hereafter known and all rights to carry on business under any such names or any variant thereof; (vii) all trademarks relating to the Property and/or the development, construction, use, occupancy or operation thereof; (viii) all goodwill relating to the Property and/or the development, construction, use, occupancy or operation thereof; (ix) all insurance proceeds and condemnation awards arising out of or incidental to the ownership, development, construction, use, occupancy or operation of the Property; (x) all reserves, deferred payments, deposits, refunds, cost savings, bonds, insurance policies and payments of any kind relating to the Property; (xi) all loan commitments issued to Trustor in connection with any sale or financing of the Property; (xii) all water stock, if any, relating to any Property and all shares of stock or other evidence of ownership of any part of or interest in any Property that is owned by Trustor in common with others; and (xiii) all supplements, modifications and amendments to the foregoing.

(c) All fixtures located upon or within the Property or now or hereafter attached to, installed in, or used or intended for use in connection with the Property, including without limitation any and all partitions, generators, screens, awnings, boilers, furnaces, pipes, plumbing, elevators, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating, ventilating, air conditioning and air cooling equipment, and gas and electric machinery and equipment.

(d) All present and future accessories, additions, attachments, replacements and substitutions of or to any or all of the foregoing.

(e) All cash and noncash proceeds and products of any and all of the foregoing, including without limitation all monies, deposit accounts, insurance proceeds and other tangible or intangible property received upon a sale or other disposition of any of the foregoing.

3. Obligations Secured. Trustor makes this grant and assignment for the purpose of securing the following obligations ("**Secured Obligations**"):

(a) Payment to Beneficiary of all indebtedness at any time owing under the terms of the Note;

(b) Payment and performance of all obligations of Trustor under this Deed of Trust;

(c) Payment and performance of all future advances and other obligations of Trustor or any other person, firm, or entity with the approval of Trustor, may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(d) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced.

The DDA and Regulatory Agreement are **not** secured by this Deed of Trust. However, any default under the DDA and Regulatory Agreement is a default under this Deed of Trust.

4. Obligations. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and fees at any time accruing or assessed on any of the Secured Obligations.

5. Incorporation. All terms of the Note and the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of all of the foregoing documents.

6. Mortgagee-in-Possession. Neither the assignment of rents set forth in the Deed of Trust nor the exercise by Beneficiary of any of its rights or remedies hereunder shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Property.

7. No Cure. In the event Beneficiary collects and receives any rents under the Deed of Trust upon any default hereof, such collection or receipt shall in no way constitute a curing of the default.

8. Opportunity to Cure. Trustor's failure or delay to perform any term or provision of this Deed of Trust constitutes a default under this Deed of Trust; however, Trustor shall not be deemed to be in default if (i) Trustor cures, corrects, or remedies such default within thirty (30) days after receipt of a notice specifying such failure or delay, or (ii) for such defaults that cannot reasonably be cured, corrected, or remedied within thirty (30) days, if Trustor commences to cure, correct, or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and diligently prosecutes such cure, correction or remedy to completion.

Beneficiary shall give written notice of default to Trustor, specifying the default complained of by Trustor. Copies of any notice of default given to Trustor shall also be delivered to any permitted lender and Trustor's limited partners provided such parties have specifically requested notice in writing delivered to Beneficiary together with an address for such notice. Beneficiary may not institute proceedings against Trustor until thirty (30) days after giving such notice or such longer period of time as may be provided herein. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within sixty (60) days after the first notice of default is given.

Except as otherwise expressly provided in this Deed of Trust, any failure or delay in giving such notice or in asserting any of its rights and remedies as to any default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it deprive either party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

In the event of any inconsistency in the terms of this Rider and the provisions set forth in the standard deed of trust recorded in the Recorder's Office of the County of Santa Clara, the terms of this Rider shall control.

Notwithstanding anything to the contrary contained in this Deed of Trust, Beneficiary hereby agrees that any cure of any default made or tendered by Trustor's limited partner shall be deemed to be a cure by Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor.

9. Possession Upon Default. Subject to Section 7 above, upon the occurrence of a default, and after delivery of notice and the expiration of all applicable cure periods, Beneficiary may, at its option, without any action on its part being required and without in any way waiving such default, take possession of the Property and have, hold, manage, lease and operate the same, on such terms and for such period of time as Beneficiary may deem proper, and may collect and receive all rents and profits, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto as may seem proper to Beneficiary, and to apply such rents and profits to the payment of (a) the cost of all such alterations, renovations, repairs and replacements, and all costs and expenses incident to taking and retaining possession of the Property, and the management and operation thereof, and keeping the same properly insured; (b) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment of the Note, and premiums for insurance, with interest on all such items; and (c) the indebtedness secured hereby, together with all costs and attorney's fees, in such order or priority as to any of such items as Beneficiary in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Any amounts received by Beneficiary or its agents in the performance of any acts prohibited by the terms of this assignment, including, but not limited to, any amounts received in connection with any cancellation, modification or amendment of any lease prohibited by the terms of this assignment and any rents and profits received by Trustor after the occurrence of a default shall be held by Trustor as trustee for Beneficiary and all such amounts shall be accounted for to Beneficiary and shall not be commingled with other funds of the Trustor. Any person receiving any portion of such trust funds shall receive the same in trust for Beneficiary as if such person had actual or constructive notice that such funds were impressed with a trust in accordance therewith.

10. Receiver. In addition to any and all other remedies of Beneficiary set forth under this Deed of Trust or permitted at law or in equity, if a default shall have occurred, Beneficiary, to the extent permitted by law and without regard to the value, adequacy or occupancy of the security for the Note and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property and to collect all rents and profits and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction by ex parte application and without notice, notice of hearing being hereby expressly waived. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the power herein contained shall be secured by this Deed of Trust.

11. Security Agreement. This Deed of Trust also constitutes a security agreement with respect to all personal property in which Beneficiary is granted a security interest hereunder, and Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as enacted in California ("**California Uniform Commercial Code**") as well as all other rights and remedies available at law or in equity. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements,

financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Trustor and Beneficiary agree that the filing of a financing statement in the record normally having to do with personal property shall never be construed as in any way derogating from or impairing the lien of this Deed of Trust and the intention of Trustor and Beneficiary that everything used in connection with the operation or occupancy of the Property is and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property or goods which are or are to become fixtures, irrespective of whether (i) any such item is physically attached to the buildings and improvements on the Property; (ii) serial numbers are used for the better identification of certain equipment items capable of being filed by the Beneficiary; or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Such mention in the financing statements is declared to be for the protection of the Beneficiary in the event any court or judge shall at any time hold that notice of Beneficiary's priority of interest must be filed in the California Commercial Code records to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivision or entity of the federal government. Trustor covenants and agrees to reimburse Beneficiary for any costs incurred in filing such financing statement and any continuation statements.

Upon the occurrence of default hereunder, and after delivery of notice and the expiration of all applicable cure periods, Beneficiary shall have the right to cause any of the Property which is personal property and subject to the security interest of Beneficiary hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Beneficiary shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law, specifically including without limitation the right to proceed as to both the real property and the personal property contained within the Property as permitted by Uniform Commercial Code Section 9501(4), including conducting a unified sale thereof. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Any person, including both Trustee and Beneficiary, shall be eligible to purchase any part or all of such property at any such disposition.

This Deed of Trust constitutes a fixture filing under Sections 9313 and 9402(6) of the California Uniform Commercial Code, as amended or recodified from time to time.

12. Notices, Demands, and Communications. Formal notices, demands, and communications between Trustor and Beneficiary shall be given by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

Beneficiary:	City of Cupertino 10300 Torre Avenue Cupertino, California 95104 Attn: City Manager
With a copy to:	Aleshire & Wynder, LLP 1970 Broadway #920 Oakland, CA 94612 Attn: Floy Andrews, Esq.

Trustor:	Mary Avenue, L.P. 1400 Parkmoor Avenue, Suite 190 San Jose, CA 95126 Attn : Executive Director
	With a copy to:
	Gubb & Barshay LLP 235 Montgomery Street, Suite 1110 San Francisco, CA 94104 Attn : Patrick Sukeforth, Esq.
Copy to Limited Partner:	_____ _____
With a copy to:	Gubb & Barshay LLP 235 Montgomery Street, Suite 1110 San Francisco, CA 94104 Attn : Patrick Sukeforth, Esq.

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate by mail.

Copies of all notices which are sent to Trustor shall also be sent to Trustor's limited partner as specified above. This obligation may not be changed by Trustor but only upon written notice to Beneficiary by the limited partner.

12. Insurance and Condemnation Proceeds. Notwithstanding anything to the contrary contained in the Deed of Trust, the DDA, Note or Regulatory Agreement, the Beneficiary shall permit insurance proceeds to be used to rebuild the Project provided that (i) sufficient funds are provided from other sources to effectively rebuild the Project to a multifamily housing complex, and (ii) the Beneficiary will hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as the Beneficiary may impose.

Notwithstanding anything to the contrary contained herein, the Beneficiary will permit condemnation proceeds to be used to rebuild the Project provided that (i) sufficient funds are provided from other sources to effectively rebuild the Project to a multifamily housing complex, and (ii) the Beneficiary will hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as the Beneficiary may impose.

13. Refinancing. Notwithstanding anything to the contrary contained in this Deed of Trust, the Beneficiary shall permit a refinancing of the Note in accordance with the terms of the Note.

14. Approval of Transfer to Partnership. Notwithstanding anything to the contrary in the Loan Documents, the transfer of the Property and assignment of the Loan to Trustor shall not be a default

under the Loan Documents, nor shall Beneficiary have the right to accelerate the Loan based on such transfer.

15. Limited Partner. Beneficiary acknowledges that the Trustor intends to bring in an investor limited partner _____ (including any of their respective successors or assigns, collectively, the "**Limited Partners**") pursuant to an amendment and restatement of the existing Partnership Agreement entered into at the time the Limited Partners are admitted ("**Amended Partnership Agreement**"). Beneficiary consents to the admission to the Trustor of the Limited Partners and the withdrawal of the initial limited partner.

16. Limited Partners' Right to Transfer Interest. Notwithstanding anything to the contrary contained in the Loan Documents, neither (i) the transfer of all or a portion of any Limited Partner's interest in the Trustor to an affiliate of Limited Partner without the consent of Beneficiary, (ii) the transfer of all or a portion of any Limited Partner's interest in the Trustor to a non-affiliate of Limited Partner with the consent of Beneficiary, which consent shall not be unreasonably withheld or (iii) the admission of a successor limited partner pursuant to the terms of the Amended Partnership Agreement shall constitute an event of default under the Loan Documents or allow acceleration of the Note.

17. General Partner Change. The withdrawal, removal, and/or replacement of a general partner of the Trustor pursuant to the terms of the Amended Partnership Agreement shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan, provided that any required substitute general partner is reasonably acceptable to Beneficiary and is selected with reasonable promptness.

18. Monetary Default. If a monetary event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder, Beneficiary shall give the Limited Partners of the Trustor as identified to Beneficiary by written notice, simultaneous written notice of such default. Trustor shall have a period of seven (7) days after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under the Loan Documents, or such longer period of time as may be specified in the Loan Documents.

19. Non-Monetary Default. If a non-monetary event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder, Beneficiary shall give Trustor and the Limited Partners of the Trustor as identified to Beneficiary by written notice, simultaneous written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Trustor shall have such period to effect a cure prior to exercise of remedies by Beneficiary under the Loan Documents, or such longer period of time as may be specified in the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days or such longer period if so specified, and if Trustor (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. If Trustor fails to take corrective action or to cure the default within a reasonable time, Beneficiary shall give Trustor and the Limited Partners of the Trustor, as identified to Beneficiary by written notice, written notice thereof, whereupon a Limited Partner may remove and replace the General Partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is 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, or such longer period of time as may be specified in the Loan Documents.

20. **Purchase Rights**. The execution and delivery of a purchase option and right of first refusal agreement as to partnership interests as may be described in the Partnership Agreement shall not constitute a default under the Loan Documents or accelerate the maturity of the Loan thereunder. Any requisite consent of Beneficiary to (a) the exercise of the rights under said purchase option and right of first refusal agreement by the project general partner or sponsor or its assignee, as applicable, identified therein, and to (b) the assumption without penalty of loan obligations by the project general partner or sponsor or its assignee, as applicable, and the release of Trustor from such obligations, shall not be unreasonably withheld. Subject to any such consent requirement, the exercise of rights under such agreement shall not constitute a default under the Loan. If the purchase option and right of first refusal agreement described herein is not exercised and the Property is sold subject to low-income housing use restrictions as contained in an existing regulatory agreement or other recorded covenant, any requisite consent of Beneficiary to said sale, and to the assumption without penalty of loan obligations by the purchaser and the release of Trustor from such obligations, shall not be unreasonably withheld.

21. **Force Majeure**. There shall be no default for rehabilitation delays beyond the reasonable control of Trustor, provided that such delays do not exceed one hundred eighty (180) days, or such longer period of time as may be specified in the Loan Documents.

22. **Inconsistency**. In the event of any inconsistency or conflict between the covenants, terms and conditions of any of the Loan Documents and this Rider, the covenants, terms and conditions of this Rider shall control.

IN WITNESS WHEREOF, Trustor has executed this Rider on the date of Trustor's acknowledgment herein below, to be effective for all purposes as of the day and year first set forth above.

TRUSTOR:

MARY AVENUE, L.P.
a California limited partnership

By: Mary Avenue Charities LLC,,
a California limited liability company
General Partner

By: Charities Housing Development
Corporation of Santa Clara County, a
California corporation
Managing Member

By: _____
Mark J. Mikl, Executive Director

By: _____
Lisa Caldwell, Secretary

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Cupertino, County of Santa Clara, State of California legally described as follows:

All of Parcel 1, as shown on that certain Parcel Map, in the City of Cupertino, County of Santa Clara, State of California, filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on May 2, 2023, in Book 953 of Maps, Pages 53 and 54.

APN: 326-27-053

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)
) ss.
COUNTY OF _____)

On _____, 20_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

SEAL:

ATTACHMENT NO. 7

REGULATORY AGREEMENT

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Cupertino
10300 Torre Avenue
Cupertino, California 95014
Attn: City Manager

APN: 326-27-053

Space above reserved for Recorder's Office
Exempt from recording fees per Govt Code 27388.1

REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("**Agreement**") is made and entered into this ____ day of _____, 202__, by and among CITY OF CUPERTINO, a municipal corporation ("**City**") and MARY AVENUE, L.P., a California limited partnership ("**Owner**").

R E C I T A L S:

A. Pursuant to that certain Disposition and Development Agreement between Owner and City dated _____, 202__ ("**DDA**"), City has provided to Owner financial assistance including the contribution of the land and providing certain loans ("**City Assistance**") for the purpose of assisting Owner with the development of a residential apartment complex thereon for extremely low, very low and low income households on that certain real property located in City of Cupertino, County of Santa Clara, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("**Site**").

B. Pursuant to the DDA, Owner has agreed to develop, construct, and maintain a rental apartment housing project consisting of forty (40) total residential units (one of which will be a resident manager's unit) (hereinafter referred to collectively as the "**Project**") on the Site.

C. City and Owner now desire to place restrictions upon the use and operation of the Project, in order to ensure that the Project shall be operated continuously as a rental apartment housing project available for rental by extremely low, very low and low income persons for the term of this Agreement.

D. It is the intent of the parties that the title vested in Owner by that certain Grant Deed for the Site dated _____, 202__ ("**Grant Deed**"), recorded immediately prior to this Agreement in the Office of the County Recorder for the County of Santa Clara be subject to this Regulatory Agreement, and that the terms hereof shall be binding on Owner and its successors in interest in the Site for so long as the Regulatory Agreement shall remain in effect.

A G R E E M E N T:

NOW, THEREFORE, Owner and City declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied for the Term, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of the citizens of the City of Cupertino, and every person renting a dwelling unit on the Site.

A. DEFINITIONS.

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

1. "**Affordable Rent**" shall have the meaning prescribed for that term in Health and Safety Code § 50053(b) and the regulations promulgated pursuant to or incorporated therein, including, without limitation, any applicable regulations promulgated pursuant to Health and Safety Code §50093.

Extremely Low Income Households are entitled to receive Affordable Rent, including a reasonable utility allowance, which does not exceed the product of thirty percent (30%) times thirty percent (30%) of the Santa Clara County Median Income, adjusted for family size appropriate for the unit.

Very Low Income Households are entitled to receive Affordable Rent, including a reasonable utility allowance, which does not exceed the product of thirty percent (30%) times fifty percent (50%) of the Santa Clara County Median Income, adjusted for family size appropriate for the unit.

Low Income Households are entitled to receive Affordable Rent, including a reasonable utility allowance, which does not exceed the product of thirty percent (30%) times sixty percent (60%) of the Santa Clara County Median Income, adjusted for family size appropriate for the unit.

Affordability Category	Studio Units	1-Bdrm Units	2-Bdrm Units	3-Bdrm Units	Total Units	IDD
Extremely Low Income	3	14			17	17
Very Low Income		4	11		15	2
Low Income		4	3		7	
Manager's unit				1	1	
Total:	**3**	**22**	**14**	**1**	**40**	**19**

2. **BMR Admin Manual.** The Term **"BMR Admin Manual"** shall refer to the Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units as approved by Cupertino's City Council pursuant to Resolution No. 25-051 which guides the administration procedures of affordable housing units in the City Below Market Rate Program.

3. Eligible Tenant. The term "**Eligible Tenant**" shall refer to an Extremely Low Income Tenant, a Very Low Income Tenant, and a Low Income Tenant.

4. Extremely Low Income Tenant. The term "**Extremely Low Income Tenant**" shall mean those tenants whose household income does not exceed thirty percent (30%) of the Santa Clara Median Income adjusted for applicable household size, as computed in accordance with Health & Safety Code Section 50106 and the regulations promulgated thereunder or any successor statute and regulations.

5. IDD. The term "**IDD**" shall mean a household containing a person with an intellectual or developmental disability.

6. Low Income Tenant. The term "**Low Income Tenant**" shall mean those tenants whose household income does not exceed sixty percent (60%) of the Santa Clara County Median Income adjusted for applicable household size, as computed in accordance with Health & Safety Code Section 50079.5 and the regulations promulgated thereunder or any successor statute and regulations.

7. Project Manager. As used in this Agreement, the term "**Project Manager**" shall refer to that entity, to be designated by Owner and approved by City, who shall be responsible for operating and maintaining the Project in accordance with the terms of this Agreement. Prior to City's approval, Owner shall act as Project Manager.

8. Qualified Manager. The term "**Qualified Manager**" shall refer to that individual (or those individuals) who may be eligible to reside in the Project pursuant to the DDA.

9. Restricted Unit. The term "**Restricted Unit**" shall refer to any of the units reserved for Eligible Tenants or the Qualified Manager.

10. Santa Clara County Median Income. The term "**Santa Clara County Median Income**" shall be determined by reference to the regulations published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, or its successor.

11. Term. The "**Term**" of this Agreement shall be ninety-nine (99) years, commencing upon the date of the recordation of the Release of Construction Covenants for the Site in accordance with the DDA.

12. Unit. The term "**Unit**" shall refer to any of thirty-nine (39) residential units in the Project.

13. Very Low Income Tenant. The term "**Very Low Income Tenant**" shall mean those tenants whose income does not exceed fifty percent (50%) of the Santa Clara County Median Income adjusted for applicable household size, as computed in accordance with Health & Safety Code Section 50105 and the regulations promulgated thereunder or any successor statute and regulations.

B. RESIDENTIAL RENTAL PROPERTY. Owner hereby agrees that the Project is to be owned, managed, and operated as a project for extremely low, very low and low income residential

rental purposes during the Term. To that end, and for the term of this Agreement, Owner hereby represents, covenants, warrants and agrees as follows:

1. Purpose. The Site is being acquired and the Project constructed for the purpose of providing extremely low, very low and low income rental housing and Owner shall own, manage, and operate the Project as a project to provide extremely low, very low and low income rental housing with some IDD households comprised of one or more interrelated buildings or structures, together with any functionally related and subordinate facilities.

2. Residential Use. None of the Units in the Project will at any time be utilized on a transient basis or used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park without City's prior consent which consent may be given or withheld in its sole and absolute discretion.

3. Conversion of Project. No part of the Project will at any time be owned by a cooperative housing corporation, nor shall Owner take any steps in connection with the conversion to such ownership or uses to condominiums, or to any other form of ownership, without the prior written approval of City which approval may be given or withheld in its sole and absolute discretion.

4. Preference to Eligible Tenants. All of the Units will be available for rental in accordance with the terms of this Agreement, and Owner shall not give preference to any particular class or group in renting the Units in the Project, except (i) the Units are required to be leased to Eligible Tenants (which, with respect to the (19) units reserved for IDD eligible residents, shall include households containing a person with an intellectual or developmental disability), and (ii) or as otherwise set forth in this Agreement.

5. Manager's unit. One (1) Unit in the Project may be occupied by a Qualified Manager.

6. Liability of Owner. Owner and Project Manager shall not incur any liability under this Agreement as a result of fraud or intentional misrepresentation by a tenant.

C. OCCUPANCY OF PROJECT BY ELIGIBLE TENANTS. Owner hereby represents, warrants, and covenants as follows:

1. Occupancy. Except as expressly provided herein, throughout the term of this Agreement the occupancy of all of the Restricted Units in the Project (excluding the Qualified Manager Unit) shall be restricted to Eligible Tenants and qualified members of the Eligible Tenant's household.

2. Occupancy of Restricted Units. In addition to the occupancy restrictions in Section C.1 and subject to Section B.5, (i) seventeen (17) of the Restricted Units in the Project shall be restricted to Extremely Low Income Tenants; (ii) fifteen (15) of the Restricted Units in the Project shall be restricted to Very Low Income Tenants; and (iii) seven (7) of the Restricted Units in the Project shall be restricted to Low Income Tenants.

3. Expiration of Occupancy and Rent Restrictions. The Restricted Units shall be subject to the restrictions contained in this Section C for the Term of this Agreement. All tenants residing in the Restricted Units during the final two (2) years of the Term shall be given notice of the expiration

of the Term at least once every twelve (12) months during the final two (2) years. After the expiration of the Term, the rents payable on the Restricted Units may be raised to market rates.

4. Rental Rates. Owner hereby agrees to rent those Restricted Units occupied by Extremely Low Income Tenants, Very Low Income Tenants and Low Income Tenants at no greater than Affordable Rent for Santa Clara County. Notwithstanding anything to the contrary set forth herein, in the event of a difference between the Affordable Rent as set forth herein and the rent which Owner may charge for a tenant of the same percentage of area median income pursuant to the rules and regulations of the California Tax Credit Allocation Committee, Owner may elect to use the rents established by the California Tax Credit Allocation Committee for Low Income Units only. In the event that Owner elects to use such rents as specified above, Owner shall provide written notice of such election to City.

5. Occupancy By Eligible Tenant. A Restricted Unit occupied by an Eligible Tenant shall be treated as occupied by an Eligible Tenant until a recertification of such tenant's income in accordance with Section C.9 below demonstrates that such tenant no longer qualifies as an Eligible Tenant.

6. Income Computation Certificate. Immediately prior to an Eligible Tenant's occupancy of a Restricted Unit, Owner shall obtain and maintain on file an Income Computation and Certification form (in the form required by the California Tax Credit Allocation Committee or on such other form as may be approved in advance by City) from each such Eligible Tenant dated immediately prior to the date of initial occupancy in the Project by such Eligible Tenant. In addition, Owner will provide such further information as may be required in the future by City. Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income as is satisfactory to City; or (v) such other information as may be reasonably requested by City. A copy of each such Income Computation and Certification shall be filed with City prior to the occupancy of a Restricted Unit by an Eligible Tenant at least annually. In the event that City has reasonable concern that Owner is not complying with the tenant eligibility requirements, City may require such information be provided quarterly by providing written notice to Owner.

7. Rental Priority. During the term of this Agreement, and to the extent allowed under applicable Affordable Housing Program restrictions and Federal, State and local fair housing laws, Owner shall use its best efforts to lease vacant Restricted Units reserved for Eligible Tenants in accordance with the Marketing Program (as defined in the DDA) and otherwise in the following order of priority: (i) displaced persons entitled to a preference pursuant to Government Code 7260 et. seq., (ii) persons identified pursuant to the City's priority point system for placement as set forth in the BMR Admin Manual (iii) other persons meeting the eligibility requirements of this Agreement. For the avoidance of doubt, the parties acknowledge and agree that, with respect to the nineteen (19) units reserved for IDD residents, if Owner is unable to identify an IDD resident meeting the criteria in clauses (i) or (ii) of the preceding sentence, then Owner may lease such unit to any IDD resident otherwise meeting the eligibility requirements of this Agreement. Owner shall and City may maintain

a list ("**Housing List**") of persons who have filed a complete application with Owner to rent a Restricted Unit in the Project and who have incomes which would qualify them as an Eligible Tenant, and Owner shall offer to rent Restricted Units on the above-referenced priority basis. From time to time, the City may provide Developer with a list of prospective tenants derived from the City's Below Market Rate Housing Program for Developer's consideration upon the availability of a Restricted Unit. Subject to all applicable federal, state, and local fair housing laws and the requirements of the Regulatory Agreements, Developer shall give priority review to such prospective tenants and, if Developer determines that a prospective tenant satisfies the applicable eligibility, income, and screening requirements, shall not unreasonably withhold approval of such prospective tenant.

8. Renting Vacant Units. When a Restricted Unit becomes available as a result of a tenant vacation, Owner shall rent the Restricted Unit to an Eligible Tenant in accordance with the order of priority set forth in Section C.7.

9. Income Recertification. Immediately prior to the first anniversary date of the occupancy of a Restricted Unit by an Eligible Tenant and on each anniversary date thereafter, Owner shall recertify the income of such Eligible Tenant by obtaining a completed Income Computation and Certification based upon the current income of each occupant of the Restricted Unit. If, after renting a Restricted Unit to an Extremely Low Income Tenant, the household income increases such that the household no longer qualifies as an Extremely Low Income Tenant, but qualifies as a Very Low Income Tenant, the household shall continue to be permitted to reside in such Restricted Unit provided that Owner shall increase the rent for said Restricted Unit to the rent level designated for a Very Low Income Tenant, and shall restrict and designate the next available Restricted Unit that is not already designated for rental to and occupancy by an Extremely Low Income Tenant as restricted to rental to and occupancy by an Extremely Low Income Tenant.

If, after renting a Restricted Unit to an Extremely Low Income Tenant or a Very Low Income Tenant, the household income increases such that the household no longer qualifies as an Extremely Low Income Tenant or as a Very Low Income Tenant, but qualifies as a Low Income Tenant, the household shall continue to be permitted to reside in such Restricted Unit provided that Owner shall increase the rent for said Restricted Unit to the rent level designated for a Low Income Tenant, and shall restrict and designate the next available Restricted Unit that is not already designated for rental to and occupancy by an Extremely Low Income Tenant or by a Very Low Income Tenant as restricted to rental to and occupancy by an Extremely Low Income Tenant or a Very Low Income Tenant (as applicable).

If, after renting a Restricted Unit, the household income increases such that the household no longer qualifies as an Extremely Low Income Tenant, as a Very Low Income Tenant, or as a Low Income Tenant, that household may not be permitted to remain in the Restricted Unit unless requiring such household to move will violate with the rules governing the low income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (collectively, the "**Tax Credit Rules**").

10. Terminating Ineligible Tenant. Upon recertification, if an Eligible Tenant has become ineligible, Owner shall allow such ineligible tenant to occupy the Restricted Unit for a period of twenty-four (24) months ("**Grace Period**"). During the Grace Period the rent shall not increase. If the ineligible tenant becomes an Eligible Tenant upon recertification during the Grace Period, Owner shall continue to rent the Restricted Unit to the Eligible Tenant at the Affordable Rent of the income

category that the Eligible Tenant falls within following recertification. If after the Grace Period the tenant remains ineligible, the ineligible tenant's lease shall not be renewed and such tenant shall be required to vacate the Restricted Unit unless requiring such household to move will violate with the Tax Credit Rules. In such event, Owner shall notify City in writing of such occurrence, and shall inform City of (1) its plans for removing the household to vacate the Restricted Unit, or (2) the specific rule in the Tax Credit Rules that prohibits such action providing written evidence of the same.

11. Certificate of Continuing Program Compliance. Upon the issuance of the Release of Construction Covenants and annually by July 1of each year, or at any time upon the written request of City, Owner shall advise City of the occupancy of the Project by delivering a Certificate of Continuing Program Compliance in the form attached hereto as Exhibit "B", certifying: (i) the number of Restricted Units of the Project which were occupied or deemed occupied pursuant to Section C.1 by an Eligible Tenant during such period, and (ii) to the knowledge of Owner either (a) no unremedied default has occurred under this Agreement, or (b) a default has occurred, in which event the Certificate shall describe the nature of the default and set forth the measures being taken by Owner to remedy such default. Owner agrees to pay City a fee pursuant to Health and Safety Code Section 33418(c) to offset City's cost of monitoring the affordable housing at the Site, which shall not exceed Five Hundred Dollars ($500) per year. In addition, Owner shall deliver to City the annual report as required by the Health and Safety Code with respect to projects utilizing tax increment funds.

12. Maintenance of Records. Owner shall maintain materially complete and accurate records pertaining to the Units, and shall permit any duly authorized representative of City to inspect the books and records of Owner pertaining to the Project including, but not limited to, those records pertaining to the occupancy of the Units.

13. Reliance on Tenant Representations. Each lease shall contain a provision to the effect that Owner has relied on the income certification and supporting information supplied by the tenant in determining qualification for occupancy of the Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

14. Conflicts. The leasing preference provision set forth in Section C.6 shall apply only to the extent, such provisions are not in conflict with Internal Revenue Code provisions or IRS regulations.

15. City Remedy for Excessive Rent Charge.

a. It shall constitute a default for Owner to charge or accept for a Restricted Unit rent amounts in excess of the amount provided for in Section C.4 of this Agreement. In the event that Owner charges or receives such higher rental amounts, in addition to any other remedy City shall have for such default, Owner shall be required to pay to City the entire amount of rent received in excess of the amount permitted pursuant to this Agreement.

b. It shall constitute a default for Owner to knowingly rent or continue to rent any Restricted Unit to a tenant who is not an Eligible Tenant for the particular Restricted Unit pursuant to the rental rate requirements set forth in Section C.4 of this Agreement. In the event Owner knowingly rents or continues to rent a Restricted Unit to an ineligible tenant, in addition to any other equitable remedy City shall have for such default, Owner, for each separate violation shall be required to pay to City an amount equal to (i) two times the greater of (A) the total rent Owner

received from such ineligible tenant, during the period of the violation, or (B) the total rent Owner was entitled to receive for renting that Restricted Unit during the period of the violation, plus (ii) any relocation expenses incurred by City as a result of Owner having rented to such ineligible person.

c. It shall constitute a default for Owner to knowingly rent or continue to rent any of the Restricted Units in violation of the leasing preference requirements of Section C of this Agreement. In the event Owner rents a Restricted Unit in violation of the leasing preference requirements and such violation has not been cured after notice and the applicable cure period set forth in Section 801 of the DDA, in addition to any other equitable remedy City shall have for such default, Owner, for each separate violation shall be required to pay City an amount equal to two (2) months of rental charges for the Restricted Unit with the highest rent. The terms of this Section C.15 shall not apply if Owner rents to an ineligible person as a result of such person's fraud or misrepresentation.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c) OF THIS SECTION C.15 ("**DAMAGE AMOUNTS**") CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO THE DEFAULTS BY OWNER SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c), CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY AND ACCOMPLISHMENT OF CITY'S PURPOSE OF ASSISTING IN THE PROVISION OF AFFORDABLE HOUSING TO ELIGIBLE TENANTS THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE AMOUNTS SET FORTH IN THIS SECTION C.15 SHALL BE THE SOLE MONETARY DAMAGES REMEDY FOR THE DEFAULTS SET FORTH IN THIS SECTION C.15, BUT NOTHING IN THIS SECTION C.15 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR SUCH DEFAULT TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIAL AT THE PLACES PROVIDED BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED SAME AND THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

OWNER'S INITIALS: _____ CITY'S INITIALS: _____

16. <u>Section 8 Tenants</u>. Owner shall accept as tenants on the same basis as all other Eligible Tenants, persons who are Grant Recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor. Owner shall not apply selection criteria to Section 8 certificate holders that are more burdensome than criteria applied to all other Eligible Tenants. Notwithstanding anything contained herein or in the DDA to the contrary, during any period when a unit is leased to a Section 8 certificate holder or the recipient of any other federal or state rental subsidy, Owner shall be permitted to charge the maximum rent allowed under the applicable rental subsidy contract, including any amount in excess of the Affordable Rent for such unit.

D. MAINTENANCE.

1. Maintenance Obligation. Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a good working condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such pavings at all times be kept in a level and smooth condition. In addition, Owner shall be required to maintain the Property in such a manner as to avoid the reasonable determination of a duly authorized official of City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

2. Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into any of such driveways or traffic aisles. Vehicles associated with the operation of the Site, including delivery vehicles, vehicles of employees and vehicles of persons with business on the Site shall park solely on the Site.

3. Tenant Compliance. Owner shall provide any proposed tenants of any portion of the Site with a copy of this Agreement (or an accurate summary of the terms of this Agreement) and shall, prior to entering into any lease agreement, have the proposed tenant execute an affidavit agreeing to comply with the provisions of this Agreement. All lease agreements shall be in writing and shall contain provisions which make compliance with the conditions of this Agreement express covenants of the lease.

4. Right of Entry. In the event Owner fails to maintain the Site in the above-mentioned condition, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from City, or if Owner and City agree such condition cannot reasonably be cured within such 30-day period Owner shall have such time as Owner and City mutually agree may be reasonably necessary to correct the condition provided that Owner is diligent in pursuit of the cure, City may, at their option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, either City, their employees, contractors or agents, may cure Owner's default by entering upon the Site and performing the necessary landscaping and/or maintenance. City shall give Owner, its representative or the residential manager reasonable notice of the time and manner of entry, and entry shall only be at such times and in such manner as is reasonably necessary to carry out this Regulatory Agreement. Owner shall pay such costs as are reasonably incurred by City for such maintenance, including attorneys' fees and costs.

5. Lien. If such costs are not reimbursed within thirty (30) days after Owners' receipt of notice thereof, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate of the lower of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees, shall be a personal obligation of Owner as well as a lien and charge, with power of sale, upon the property interests of Owner, and the rents, issues and profits of such property. City and/or City may bring an

action at law against Owner obligated to pay any such sums or foreclose the lien against Owner's property interests. Any such lien may be enforced by sale by City following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, et seq., of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to any Site approved by City pursuant to the DDA, and any purchaser at any foreclosure or trustee's sale (as well as any deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such monetary lien, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at the foreclosure sale, as owner of the subject Site after the date of such foreclosure sale, shall become a lien upon such Site upon recordation of a Notice of Assessment or Notice of Claim of Lien as herein provided.

E. MANAGEMENT.

1. Approval of Project Manager; Designation of Resident Manager. Subject to the terms and conditions contained hereinbelow, Owner shall at all times during the operation of the Project pursuant to this Agreement retain a project management firm to perform the management and/or supervisory functions ("**Project Manager**") with respect to the operation of the Project including day-to-day administration, maintenance and repair. Charities Housing Development Corporation of Santa Clara County is hereby preapproved as the Project Manager. Owner shall, before execution or any subsequent amendment or replacement thereof, submit and obtain City's written approval of a management contract ("**Management Contract**") entered into between Owner and a Project Manager acceptable to City. Subject to any regulatory or licensing requirements of any other applicable governmental agency, the Management Contract may be for a term of up to fifteen (15) years and may be renewed for successive terms in accordance with its terms but may not be materially amended or modified without the prior written consent of City. The Management Contract shall also provide that the Project Manager shall be subject to termination for failure to meet project maintenance and operational standards set forth herein or in other agreements between Owner and City. Owner shall promptly terminate any Project Manager which commits or allows such failure, unless the failure is cured within a reasonable period in no event exceeding sixty (60) days from Project Manager's receipt of notice of the failure from Owner or City. Owner's obligation to retain a Project Manager shall remain in force and effect for the same duration as the use covenants set forth in Section B of this Agreement. Notwithstanding anything to the contrary in this Section, the Project may be self-managed by Owner with the prior written consent of City's City Manager. Any change in the Project Manager shall be approved, in writing, by the City Manager, which approval shall not be unreasonably withheld.

In addition to the Project Manager, one (1) resident manager may be designated, as necessary, by Owner or Project Manager.

2. Serious Mismanagement. In the event of "Serious Mismanagement" (as that term is defined below) of the Project, City shall have right to require that such Serious Mismanagement cease

immediately, and further to require the immediate replacement of the Project Manager or Resident Manager. For purposes of this Agreement the term "**Serious Mismanagement**" shall mean management of the Project in a manner which violates the terms and/or intent of this Agreement and/or the Management Contract to operate an affordable housing complex of the highest standard, and shall include, but is not limited to, the following:

a. Knowingly leasing or continuing to lease to ineligible tenants or tenants whose income exceeds the prescribed levels;

b. Knowingly allowing the tenants to exceed the prescribed occupancy levels without taking immediate steps to stop such overcrowding;

c. Repeated failing to maintain the Project and the Site in the manner required by this Agreement (including applicable cure periods);

d. Repeated failing to submit the reports as required by this Agreement or failing to submit materially complete reports (including applicable cure periods);

e. Fraud in connection with any document or representation relating to this Agreement or embezzlement of Project monies; and

f. Failing to fully cooperate with the County Sheriff's Department and/or City's Police Department (as applicable) in maintaining a crime-free environment on the Site.

F. COMPLIANCE WITH LAWS.

1. State and Local Laws. Owner shall comply with all ordinances, regulations and standards of City and any laws applicable to the Site. Owner shall comply with all rules and regulations of any assessment district of City with jurisdiction over the Site.

2. Lease Approval. City shall have the right, but is not required, to approve any lease forms, revisions, amendments or modification made to same, used by the Project Manager or Resident Managers for leasing Units within the Site.

G. INSURANCE.

1. Duty to Procure Insurance. Owner covenants and agrees for itself, and its assigns and successors-in-interest in the Site that from completion of the Project as evidenced by City's issuance of a certificate of occupancy, and continuing thereafter until the expiration of the Term of this Agreement, Owner or such successors and assigns shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and City, and shall provide City evidence reasonably acceptable to City Manager, insurance policies meeting the minimum requirements set forth below:

a. Commercial General Liability insurance with respect to the Site and the operations of or on behalf of Owner, in an amount not less than Two Million Dollars ($2,000,000) per occurrence combined single limit including products, completed operations, incidental, contractual, bodily injury, personal injury, death and property damage liability per occurrence, subject to such increases in amount as City may reasonably require from time to time. The insurance to be provided by Owner may provide for a deductible or self-insured retention of

not more than Twenty-Five Thousand Dollars ($25,000), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above. The amounts of coverage and deductible under this paragraph may be increased by City upon written notice to Owner provided such increase is based on such insurance as required for similar projects.

b. With respect to the improvements and any fixtures and furnishings to be owned by Owner on the Site, All Risk Property insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in Santa Clara County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquake to the extent generally and commercially available at commercially reasonable rates as reasonably determined by Owner. City shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

c. All policies of insurance required to be carried by Owner shall be written by responsible and solvent insurance companies licensed or authorized to do business in the State of California and having a policy-holder's rating of A or better, in the most recent addition of "Best's Key Rating Guide -- Property and Casualty." A copy of each paid-up policy evidencing such insurance (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required herein, and containing the provisions specified herein, shall be delivered to City prior to its issuance of the Release of Construction Covenants for the Project and thereafter, upon renewals, not less than thirty (30) days prior to the expiration of coverage. City may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Owner hereunder. In no event shall the limits of any policy be considered as limiting the liability of Owner hereunder.

d. Each insurance policy required to be carried by Owner pursuant to this Agreement shall contain the following endorsements, provisions or clauses:

(1) The insurer will not cancel or materially alter the coverage provided by such policy in a manner adverse to the interest of the insured without first giving City a minimum of thirty (30) days prior written notice by certified mail, return receipt requested.

(2) A waiver by the insurer of any right to subrogation against City, its agents, employees, or representatives, which arises or might arise by reason of any payment under such policy or policies or by reason of any act or omission of City, its agents, officers, members, officials, employees, or representatives.

(3) City, their respective agents, officers, members, officials, employees, volunteers, and representatives shall be additional insureds on the Commercial General Liability policies.

(4) City shall be loss payees on the All Risk Property insurance policies.

(5) Coverage provided by these policies shall be primary and non-contributory to any insurance carried by City, their officers, officials, employees, volunteers, agents, or representatives.

(6) Failure to comply with reporting provisions shall not affect coverage provided to City, their officers, employees, volunteers, agents, or representatives.

e. City's City Manager may require an increase in the minimum limits of the insurance policies required by this Section as such increases are reasonably determined necessary to provide for changes in cost of living, liability exposure, the market for insurance, or the use of the Site. Such increases in insurance coverage shall be effective upon receipt of written notice from the City Manager, provided that Owner shall have the right to appeal a determination of increased coverage by the City Manager to the City Council within thirty (30) days of receipt of notice from the City Manager.

f. City's City Manager may waive or modify the insurance requirements set forth herein if such insurance is determined by the City Manager not to be commercially available. Owner shall submit such evidence of commercial availability as is reasonably required by the City Manager. At least annually, Owner shall review the availability of any insurance requirement waived or modified pursuant to this section, and shall meet any such insurance requirement as such insurance becomes commercially available.

2. Failure to Procure Insurance. If Owner fails to procure and maintain the above-required insurance despite its commercial availability, then City, in addition to any other remedy which City may have hereunder for Owner's failure to procure, maintain, and/or pay for the insurance required herein, may (but without any obligation to do so) at any time or from time to time, after thirty (30) days written notice to Owner, procure such insurance and pay the premiums therefor, in which event Owner shall immediately repay City all sums so paid by City together with interest thereon at the maximum legal rate.

H. OBLIGATIONS TO REPAIR.

1. Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section H.3 below, if the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Owner, Owner shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as the Project is required to be maintained in pursuant to this Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement or restoration and Owner shall complete the same as soon as possible thereafter so that the Project can continue to be operated and occupied as an affordable housing project in accordance with this Agreement. However, in the event of catastrophic damage not covered by insurance, Owner shall be excused from the obligation to rebuild but shall be obligated to ensure that the property is in a safe condition. Subject to extensions of time for Enforced Delay events described in the DDA, in no event shall the repair, replacement, or restoration period exceed one (1) year from the date Owner obtains insurance proceeds unless City's City Manager, in his or her sole and absolute discretion, approves a longer period of time. City shall cooperate with Owner, at no expense to City, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Property or any Project lenders do not permit the repair, replacement, or restoration, Owner may elect not to repair, replace, or restore the Project by giving notice to City (in which event Owner shall be entitled to all insurance proceeds but Owner shall be required to remove all debris from the Site) or Owner may reconstruct such other improvements on the Site as are consistent with applicable

land use regulations and approved by City and the other governmental agency or agencies with jurisdiction.

If Owner fails to obtain insurance as required by the DDA or this Agreement (and City has not procured such insurance and charged Owner for the cost), Owner shall be obligated to reconstruct and repair any partial or total damage to the Project and improvements located on the site in accordance with this Section H.1.

2. Continued Operations. During any period of repair, Owner shall continue, or cause the continuation of, the operation of the Project to the extent reasonably practicable from the standpoint of prudent business management.

3. Damage or Destruction Due to Cause Not Required to be Covered by Insurance. If the improvements comprising the Project are completely destroyed or substantially damaged by a casualty for which Owner is not required to (and has not) insure against, then Owner shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing City with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, Owner shall remove all debris from the Property. As used in this Section H.3, "substantial damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is ten percent (10%) or more of the replacement cost of the improvements comprising the Project. In the event Owner does not timely elect not to repair, replace, or restore the improvements as set forth in the first sentence of this Section H.3, Owner shall be conclusively deemed to have waived its right not to repair, replace, or restore the improvements and thereafter Owner shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed improvements in accordance with Section H.1 above and continue operation of the apartment complex during the period of repair (if practicable) in accordance with Section H.2 above.

I. LIMITATIONS ON TRANSFERS.

Owner covenants that Owner shall not transfer the Site or any of its interests therein except as provided in this Section.

1. Transfer Defined. As used in this Section, the term "**Transfer**" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) (in the aggregate) of the present ownership and/or control of any person or entity constituting Owner or its general partners, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family, or among the entities constituting Owner or its general partners or their respective shareholders. In the event any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner, is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of such corporation, of beneficial interests of such trust; in the event that any entity constituting Owner, its successor or the constituent partners of Owner or any successor of Owner is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of such limited or general partnership interest; in the event that any entity constituting

Owner, its successor or the constituent partners of Owner or any successor of Owner is a joint venture, such transfer shall refer to the transfer of more than twenty-five percent (25%) of Ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

2. City Approval of Transfer Required. Owner shall not Transfer the Site or any of Owner's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, and if so purported to be Transferred, the same shall be null and void. In considering whether it will grant approval of any Transfer by Owner of its interest in the Site, City shall consider factors such as (i) whether the completion of the Project is jeopardized; (ii) the financial credit, strength, and capability of the proposed transferee to perform City's obligations hereunder; and (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written agreement by City, no transfer by Owner of all or any portion of its interest in the Site (including without limitation a transfer not requiring City approval hereunder) shall be deemed to relieve it or any successor party from the obligation to complete the Project or any other obligations under this Regulatory Agreement. In addition, no attempted transfer of any of Owner's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by City assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following:

(a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing, but Owner shall notify City in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

(b) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the acquisition of the Site and construction of improvements on the Site, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors.

(c) After recordation of the Release of Construction Covenants, any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing provided that the principal amount of the loan does not exceed eighty percent (80%) of the value of the land and improvements thereon.

(d) The granting of easements to any appropriate governmental agency or utility to facilitate the development of the Site.

(e) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which Ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(f) A transfer of ownership interests to a member of the transferor's immediate family, a trust, testamentary or otherwise, in which immediate family members of the transferor are the sole beneficiaries, or a corporation or partnership in which the immediate family members or shareholders of the transferor have controlling majority interest of more than fifty percent (50%).

(g) A change in the respective percentage ownership interests exclusively of the present owners of Owner (as of the date of this Agreement), but this shall not authorize the transfer of any interest to any person or entity who is not a present owner of Owner.

(h) A sale or Transfer of any limited partnership interest in Owner, or the permitted successor thereof, to a Qualified Tax Credit Investor.

(i) A sale or transfer to a Qualified Tax Credit Investor.

(j) The removal of a general partner of Owner in accordance with Owner's limited partnership agreement and the replacement thereof with an affiliate of the Qualified Tax Credit Investor or a California nonprofit corporation (or an limited liability company wholly owned by a California nonprofit corporation).

(k) Transfer of the Project or limited partnership interests in the Owner's limited partnership to a general partner, general partners or affiliates thereof, at the end of the fifteen (15) year Tax Credit recapture period.

(l) Admission of the Qualified Tax Credit Investor to the Owner or the transfer of the Qualified Tax Credit Investor's interest in Owner to another party, or the redemption of the Qualified Tax Credit Investor's interest in the Owner.

(m) Execution of a residential lease for the Units in the ordinary course of operations of the Site.

J. ENFORCEMENT. In the event Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner pursuant to this Agreement, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by City, or, in the event said default cannot be cured within said time period, Owner has failed to commence to cure such default within said thirty (30) days and thereafter fails to diligently prosecute said cure to completion, then City shall declare an "**Event of Default**" to have occurred hereunder, and, at its option, may take one or more of the following steps:

1. By mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of this Agreement; or

2. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner hereunder; or

3. Enter the Site and cure the Event of Default as provided in Section E hereof.

4. Impose, through City's City Manager, an administrative fine for each day the violation continues. The amount of the fine shall be Twenty-Five Dollars ($25.00) per day, unless the violation is deemed a major violation, in which case the fine shall be Seventy-Five dollars ($75.00) per day. The amounts of the foregoing fines shall be automatically increased by Five Dollars ($5.00) every

five (5) years during the Term of this Agreement. A "major" violation shall be one which affects adjacent property or the health and safety of persons. Owner may appeal the assessment of any fine to City Council who may reverse, modify or uphold the decision of the City Manager. In making this decision, City Council shall determine whether the violation exists and whether the amount of the fine is appropriate under the circumstances.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its 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 another party.

K. NON-DISCRIMINATION. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Owner, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site, or any part thereof (except as permitted by this Agreement).

L. COVENANTS TO RUN WITH THE LAND. Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth in this Agreement. City and Owner hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors in title to the Site for the Term; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire. All covenants without regard to technical classification or designation shall be binding for the benefit of City, and such covenants shall run in favor of City for the Term of this Agreement, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that Owner's legal interest in the Site is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Eligible Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which City was formed.

Owner, in exchange for City entering into the DDA, hereby agrees to hold, sell, and convey the Site subject to the terms of this Agreement. Owner also grants to City and City the right and power to enforce the terms of this Agreement against Owner and all persons having any right, title or interest in the Site or any part thereof, their heirs, successive owners and assigns.

M. INDEMNIFICATION. Owner agrees for itself and its successors and assigns to indemnify, defend, and hold harmless City and its respective officers, members, officials, employees, agents, volunteers, and representatives from and against any loss, liability, claim, or judgment relating

in any manner to the Project excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of City or its respective officers, officials, employees, members, agents, volunteers, or representatives. Owner, while in possession of the Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of property taxes and assessments in connection with the Site. The foregoing indemnification, defense, and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

N. ATTORNEY'S FEES. In the event that a party to this Agreement brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

O. AMENDMENTS. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Santa Clara.

P. NOTICE. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

City:	City of Cupertino 10300 Torre Avenue Cupertino, California 95014 Attn: City Manager
Copy to:	Aleshire & Wynder, LLP 1970 Broadway, Suite 920 Oakland, CA 94612 Attn: Floy Andrews, Esq.
Owner:	Mary Avenue, LP c/o Charities Housing 1400 Parkmoor Avenue, Suite 190 San Jose, CA 95126 Attn: Executive Director
Copy to:	Gubb and Barshay LLP 235 Montgomery Street, Suite 1110 San Francisco, CA 94104 Attn: Lauren Fechter, Esq.

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

Q. **SEVERABILITY; WAIVER; INTEGRATION**.

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

2. Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

3. Integration. This Agreement contains the entire Agreement between the parties and neither party relies on any warranty or representation not contained in this Agreement.

R. FUTURE ENFORCEMENT. The parties hereby agree that should City cease to exist as an entity at any time during the term of this Agreement, City of Cupertino shall have the right to enforce all of the terms and conditions herein, unless City had previously specified another entity to enforce this Agreement.

S. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

T. CONFLICT WITH TAX CREDIT REQUIREMENTS. Notwithstanding anything to the contrary set forth in the Agreement, to the extent that any provision of this Agreement conflicts with any provision of Section 42 of the Internal Revenue Code of 1986 (as amended) and/or any rules or requirements of the California Tax Credit Allocation Committee (collectively, the "Tax Credit Requirements"), Owner shall notify City in writing and the parties shall make appropriate and reasonable revisions to this Agreement to prevent any violation of the Tax Credit Requirements while still protecting the rights and obligations of City. Any modifications must be in writing executed and acknowledged by both parties and recorded in the Official Records of Santa Clara County.

U. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

IN WITNESS WHEREOF, City and Owner have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

OWNER:

MARY AVENUE, L.P.,
a California limited partnership

By: Mary Avenue Charities LLC,
a California limited liability company
General Partner

By: Charities Housing Development Corporation of Santa Clara County, a California corporation
Managing Member

By: _____
Mark J. Mikl, Executive Director

By: _____
Lisa Caldwell, Secretary

CITY:

CITY OF CUPERTINO,
a California municipal corporation

By: _____
Kitty Moore, Mayor

Date: _____, 202_

ATTEST:

By: _____
Lauren Sapudar, Acting
City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Floy Andrews, Interim City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

That certain real property in the City of Cupertino, County of Santa Clara, State of California legally described as follows:

All of Parcel 1, as shown on that certain Parcel Map, in the City of Cupertino, County of Santa Clara, State of California, filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on May 2, 2023, in Book 953 of Maps, Pages 53 and 54.

APN: 326-27-053

EXHIBIT "B"

Period Covered from _____, 20__ to _____, 20__

ANNUAL CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE
CITY OF CUPERTINO

The undersigned, MARY AVENUE, L.P., a California limited partnership ("**Owner**"), has read and is thoroughly familiar with the provisions of the Disposition and Development Agreement dated _____, 202__ ("**DDA**") and documents referred to therein executed by Owner and the City of Cupertino ("**City**") including, but not limited to, the Regulatory Agreement, as such term is defined in the DDA.

As of the date of this Certificate, the following Restricted Units in the Project are: (i) occupied by Eligible Tenants or Qualified Permanent Residents (as defined in the Regulatory Agreement), or (ii) currently vacant and being held available for such occupancy and have been so held continuously since the date an Eligible Tenant vacated such Restricted Unit:

	Occupied	**Vacant**
Eligible Tenants/Qualified Permanent Residents:	_____	_____

As of the date of this Certificate, the following are numbers of Very Low Income Tenants, Low Income Tenants, Very Low Income Senior Citizen Tenants, and Low Income Senior Citizen Tenants who commenced occupancy of Restricted Units during the preceding year:

Extremely Low Income Tenants	**Very Low Income Tenants**	**Low Income Tenants**
Unit Nos. _____	Unit Nos. _____	Unit Nos. ____

Attached is a separate sheet ("**Occupancy Summary**") listing, among other items, the following information for each Unit: the number of each Unit, the occupants of each Unit, the rental paid for each Unit, and the size and number of bedrooms in each Unit. Owner certifies that the information contained in the Occupancy Summary is true and accurate.

The undersigned hereby certifies that (1) a review of the activities of Owner during such period and of Owner's performance under the DDA and the documents referred to therein has been made under the supervision of the undersigned, and (2) to the best knowledge of the undersigned, based on the review described in clause (1) hereof, Owner is not in default under any of the terms and provisions of the above documents (or describe the nature of any detail and set forth the measures being taken to remedy such defaults).

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)
) ss.
COUNTY OF _____)

On _____, 202___ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 202__ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

SEAL

ATTACHMENT NO. 8

RELEASE OF CONSTRUCTION COVENANTS

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95104
Attn: City Manager

APN 326-27-053

(Space Above This Line for Recorder's Office Use Only)
Exempt from recording fees per Govt Code Section 6103

RELEASE OF CONSTRUCTION COVENANTS

RECITALS:

Pursuant to that certain Disposition and Development Agreement ("**Agreement**") dated _____, 202_ between and between the CITY OF CUPERTINO, a municipal corporation ("**City**") and MARY AVENUE, L.P., a California limited partnership ("**Developer**"), Developer has agreed to develop a residential development ("**Project**") on the Site (as defined below).

A. As referenced in the Agreement, City is required to furnish Developer with a Release of Construction Covenants upon completion of construction and development, which release shall be in such form as to permit it to be recorded in the Santa Clara Official Records of the County Clerk of the County of Santa Clara, California.

B. Developer has requested that City furnish Developer with the Release of Construction Covenants for the Site more particularly described on Exhibit "A" attached hereto and incorporated herein by reference ("**Site**").

C. The Agreement provided for certain covenants to run with the land, which covenants were incorporated in the Regulatory Agreement, as those terms are defined in the Agreement.

D. This Release of Construction Covenants shall constitute a conclusive determination by City of the satisfactory completion by Developer of the construction and development required by the Agreement and of Developer's full compliance with the terms of the Agreement with respect to such construction and development, but not of the Regulatory Agreement, the provisions of which shall continue to run with the land pursuant to their terms.

E. City has conclusively determined that the construction and development on the Site required by the Agreement has been satisfactorily completed by Developer in full compliance with the terms of the Agreement.

NOW, THEREFORE, The improvements required to be constructed under the Agreement have been satisfactorily completed in accordance with the provisions of said Agreement.

1. This Release shall constitute a conclusive determination of satisfaction of the agreements and covenants contained in the Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof.

2. This Release shall not constitute evidence of Developer's compliance with the Regulatory Agreement, the provisions of which shall continue to run with the land.

3. This Release shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the improvements or any part thereof.

4. This Release is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Agreement or any other provisions of the documents incorporated therein.

IN WITNESS WHEREOF, City has executed this Release of Construction Covenants this _____ day of _____, 20__.

CITY:

CITY OF CUPERTINO,
a California municipal corporation

By: _____
Kitty Moore, Mayor

Date: _____, 202_

ATTEST:

By: _____
Lauren Sapudar, Acting
City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Floy Andrews, Interim City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

That certain real property in the City of Cupertino, County of Santa Clara, State of California legally described as follows:

All of Parcel 1, as shown on that certain Parcel Map, in the City of Cupertino, County of Santa Clara, State of California, filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on May 2, 2023, in Book 953 of Maps, Pages 53 and 54.

APN: 326-27-053

Mary Ave Villas - DDA Cupertino (2073496.8)

Final Audit Report 2026-02-11

Created:	2026-02-09
By:	Araceli Alejandre (AraceliA@cupertino.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAfyiKAKpAh0NKJTYgCxxrzKF4_GJh7YMN

"Mary Ave Villas - DDA Cupertino (2073496.8)" History

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2026-02-09 - 8:01:24 PM GMT

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Signature Date: 2026-02-09 - 9:03:01 PM GMT - Time Source: server- IP address: 157.131.186.49

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Signature Date: 2026-02-09 - 9:49:59 PM GMT - Time Source: server- IP address: 76.247.180.176

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Signer lcaldwell@charitieshousing.org entered name at signing as Lisa Caldwell
2026-02-10 - 11:57:44 PM GMT- IP address: 73.70.190.211

Document e-signed by Lisa Caldwell (lcaldwell@charitieshousing.org)
Signature Date: 2026-02-10 - 11:57:46 PM GMT - Time Source: server- IP address: 73.70.190.211

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2026-02-10 - 11:57:49 PM GMT

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2026-02-10 - 11:57:58 PM GMT- IP address: 3.84.220.234

Document e-signed by Floy Andrews (floya@cupertino.gov)

Signature Date: 2026-02-11 - 1:25:43 AM GMT - Time Source: server- IP address: 64.165.34.3

Agreement completed.

2026-02-11 - 1:25:43 AM GMT

Mary Ave Villas - DDA Cupertino (2073496.8)

Final Audit Report 2026-02-11

Created:	2026-02-11
By:	Araceli Alejandre (AraceliA@cupertino.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAgpcl6xTDlawLruqX5UNwIhiOX21rxO4S

"Mary Ave Villas - DDA Cupertino (2073496.8)" History

Document created by Araceli Alejandre (AraceliA@cupertino.gov)
2026-02-11 - 10:05:41 PM GMT- IP address: 71.202.76.156

Document emailed to kmoore@cupertino.gov for signature
2026-02-11 - 10:40:43 PM GMT

Email viewed by kmoore@cupertino.gov
2026-02-11 - 10:40:49 PM GMT- IP address: 98.92.220.131

Signer kmoore@cupertino.gov entered name at signing as Catherine "Kitty" Moore
2026-02-11 - 11:30:32 PM GMT- IP address: 64.165.34.3

Document e-signed by Catherine "Kitty" Moore (kmoore@cupertino.gov)
Signature Date: 2026-02-11 - 11:30:34 PM GMT - Time Source: server- IP address: 64.165.34.3

Document emailed to Lauren Sapudar (laurens@cupertino.org) for signature
2026-02-11 - 11:30:37 PM GMT

Email viewed by Lauren Sapudar (laurens@cupertino.org)
2026-02-11 - 11:30:48 PM GMT- IP address: 98.92.21.243

Document e-signed by Lauren Sapudar (laurens@cupertino.org)
Signature Date: 2026-02-11 - 11:32:04 PM GMT - Time Source: server- IP address: 64.165.34.3

Agreement completed.
2026-02-11 - 11:32:04 PM GMT

26-018 approving the Disposition and Development Agreement (Attachment C)

Final Audit Report 2026-02-18

Created:	2026-02-12
By:	Araceli Alejandre (AraceliA@cupertino.gov)
Status:	Approved
Transaction ID:	CBJCHBCAABAAjJ-MnLI6uXn4KIKvVxqX36MqyIcvAJ3y

"26-018 approving the Disposition and Development Agreement (Attachment C)" History

Document created by Araceli Alejandre (AraceliA@cupertino.gov)
2026-02-12 - 11:31:18 PM GMT- IP address: 71.202.76.156

Document emailed to Mark Mikl (mmikl@charitieshousing.org) for approval
2026-02-12 - 11:34:50 PM GMT

Email viewed by Mark Mikl (mmikl@charitieshousing.org)
2026-02-13 - 0:15:57 AM GMT- IP address: 76.247.180.176

Document approved by Mark Mikl (mmikl@charitieshousing.org)
Approval Date: 2026-02-13 - 0:32:19 AM GMT - Time Source: server- IP address: 76.247.180.176

Document emailed to lcaldwell@charitieshousing.org for approval
2026-02-13 - 0:32:21 AM GMT

Email viewed by lcaldwell@charitieshousing.org
2026-02-13 - 9:56:12 PM GMT- IP address: 104.47.51.126

Signer lcaldwell@charitieshousing.org entered name at signing as Lisa Caldwell
2026-02-13 - 9:56:53 PM GMT- IP address: 73.70.190.211

Document approved by Lisa Caldwell (lcaldwell@charitieshousing.org)
Approval Date: 2026-02-13 - 9:56:55 PM GMT - Time Source: server- IP address: 73.70.190.211

Document emailed to kmoore@cupertino.gov for approval
2026-02-13 - 9:56:57 PM GMT

Email viewed by kmoore@cupertino.gov
2026-02-13 - 9:57:03 PM GMT- IP address: 3.80.171.128

Signer kmoore@cupertino.gov entered name at signing as Kitty Moore

2026-02-18 - 6:53:21 PM GMT- IP address: 64.165.34.3

Document approved by Kitty Moore (kmoore@cupertino.gov)

Approval Date: 2026-02-18 - 6:53:23 PM GMT - Time Source: server- IP address: 64.165.34.3

Agreement completed.

2026-02-18 - 6:53:23 PM GMT