

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**Sunnyvale Block 15 – Housing Project**

**By and Between**

**CITY OF SUNNYVALE**

**and**

\_\_\_\_\_ **HOUSING PARTNERS, L.P.**

Dated as of \_\_\_\_\_, 2018

**DISPOSITION AND DEVELOPMENT AGREEMENT**  
**Sunnyvale Block 15 – Housing Project**

**THIS DISPOSITION AND DEVELOPMENT AGREEMENT** (the "Agreement") dated, for identification purposes only, as of \_\_\_\_\_, 2018 (the "Date of this Agreement"), is made and entered into by and between the **CITY OF SUNNYVALE**, a municipal corporation (the "City"), and \_\_\_\_\_ **HOUSING PARTNERS, L.P.**, a California limited partnership (the "Partnership"), with reference to the following:

**RECITALS**

A. **WHEREAS**, the administrative general partner of Partnership is an experienced owner, developer, and manager of affordable housing for low-income residents;

B. **WHEREAS**, the City owns fee title to 1.44 acres of improved land located at 365-388 Charles Street (APN# 165-130-74), 396 Charles Street (APN# 165-130-46), 397 South Mathilda Avenue (APN# 165-130-68), 402 Charles Street (APN# 165-130-45), 406 Charles Street (APN# 165-130-73), and 403 South Mathilda Avenue (APN# 165-130-69) in the City of Sunnyvale and legally described as Parcel A on Exhibit A attached hereto (collectively, the "Parcels");

C. **WHEREAS**, the Partnership may process a parcel map and/or lot line adjustment (as applicable) to consolidate Parcels into one single parcel (the "Property");

D. **WHEREAS**, the parties intend, on the terms and conditions set forth in this Agreement, for the City to ground lease the Property to Partnership and for Partnership to develop thereon the approximately 90-unit affordable rental housing project, office space and interior amenities for residents that are no less than 4,000 square feet of floor area and an additional minimum 1,500 square feet of floor area that may be used as either resident-serving or commercial space, all as described in the Scope of Development (the "Project"); and

E. **WHEREAS**, in order to make the Project financially feasible, the City also will, on the terms and conditions set forth in this Agreement, provide certain financial assistance to Partnership.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions herein contained, the City and the Partnership hereto agree as follows:

**1. DEFINITIONS AND INTERPRETATION.**

**1.1 Defined Terms.** As used in this Agreement (including in the Recitals above), capitalized terms are defined where first used or as set forth in this Section. Capitalized terms used in an exhibit attached hereto and not defined therein shall also have the meanings set forth in this Section 1.1.

**“Affordable Housing Agreement”** means the regulatory agreement memorializing the City’s affordable housing requirements for the Project to be recorded in the Official Records against the Partnership’s leasehold estate in the Property, the form of which is attached hereto as Exhibit H and incorporated herein by this reference.

**“Building Permit”** means all permits issued by City and required for commencement of construction of the Improvements.

**“Certificate of Completion”** has the meaning set forth in Article 18.

**“City”** means the City of Sunnyvale, California.

**“City Indemnitees”** means the City and its council members, officers, directors, representatives, consultants, employees and agents.

**“City Subordinate Loan”** means the loan to be made to Partnership pursuant to Section 12.1.

**“City Subordinate Loan Closing”** means recordation of the City Subordinate Loan Deed of Trust in the Official Records.

**“City Subordinate Loan Deed of Trust”** means the deed of trust encumbering the Property, in the form attached hereto as Exhibit G, to be executed by Partnership pursuant to Section 12.2 in order to secure the City Subordinate Loan Note.

**“City Subordinate Loan Documents”** means, collectively, this Agreement, the City Subordinate Loan Note, the City Subordinate Loan Deed of Trust, the Affordable Housing Agreement and any other agreement, document or instrument that the City requires in connection with the City Subordinate Loan.

**“City Subordinate Loan Note”** means that certain promissory note in the form attached hereto as Exhibit F, to be executed by Partnership in favor of City to evidence the obligation of Partnership to repay the City Subordinate Loan.

**“City Title Policy”** has the meaning set forth in Section 13.1(e).

**“Close of Escrow”** means recordation of the Memorandum of the Ground Lease, the Senior Loan Security Documents, the Affordable Housing Agreement, and the City Subordinate Loan Deed of Trust in the Official Records.

**“Completion Guaranty”** means a completion guaranty substantially in the form attached hereto as Exhibit J.

**“Construction Lender”** means the first trust deed lender that provides construction financing for the Project.

**“Construction Loan”** means the construction loan for the Project secured by the Senior Loan Security Documents.

**“Construction Loan Closing”** means recordation of the Senior Loan Security Documents and the City Subordinate Loan Deed of Trust in the Official Records.

**“County”** means the County of Santa Clara, California.

**“Director of Community Development”** means the director of the department of community development of the City of Sunnydale or the director’s designee.

**“Currently Occupied Structures”** has the meaning set forth in Section 6.2.

**“Escrow”** means the escrow through which (a) the Property is ground leased to Partnership, (b) the Construction Loan Closing is conducted, and (c) the City Subordinate Loan Closing is conducted.

**“Escrow Holder”** means the firm that holds the Escrow.

**“Event of Default”** has the meaning set forth in Section 20.1.

**“Evidence of Financing”** has the meaning set forth in Section 7.4.

**“Federal Tax Credit”** has the meaning set forth in Section 7.1(b).

**“Final Project Budget”** has the meaning set forth in Section 8.4(b).

**“Final Construction Documents”** means plans, drawings and specifications in sufficient detail to support issuance of a Building Permit for the Project.

**“General Contractor”** has the meaning set forth in Section 8.4(d).

**“Ground Lease”** has the meaning set forth in Section 8.1 and which is substantially in the form attached hereto as Exhibit E.

**“Hazardous Materials”** means flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable law, including, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 42 §§ 9601, et seq., as amended. “Hazardous Materials” expressly exclude substances typically used in the construction, development, operation or maintenance of an apartment complex provided such substances are used in accordance with all applicable laws.

**“Improvements”** means the improvements to be constructed on the Property in accordance with this Agreement, including, without limitation, in accordance with the Scope of Development and the Final Construction Documents.

**“Land Use Entitlements”** has the meaning set forth in Section 4.1.

**“Memorandum of Ground Lease”** means the document to be executed by the City and Partnership and recorded in the Official Records in order to give constructive notice of the Ground Lease. The form of the Memorandum of Ground Lease is attached hereto as Exhibit I.

**“Notices”** has the meaning set forth in Article 22.

**“Official Records”** means the Official Records of the County.

**“Partnership”** has the meaning set forth in the opening paragraph of this Agreement.

**“Partnership Title Policy”** has the meaning set forth in Section 8.6(a).

**“Permitted Encumbrances”** means the Senior Loan Security Documents and such other exceptions to title approved by the Director of Community Development.

**“Preliminary Project Budget”** has the meaning set forth in Section 7.2(a).

**“Project”** has the meaning set forth in Recital D above.

**“Project Architect”** has the meaning set forth in Section 5.4.

**“Project Costs”** means all costs of any nature incurred in connection with development of the Project.

**“Project Documents”** means, collectively, this Agreement, the City Subordinate Loan Note, the City Subordinate Loan Deed of Trust, the Affordable Housing Agreement, the Ground Lease, the Memorandum of Ground Lease and any other agreement, document or instrument that Partnership and the City enter into pursuant to this Agreement or in order to effectuate the purposes of this Agreement.

**“Project Financing”** has the meaning set forth in Section 7.1.

**“Property”** has the meaning set forth in Recital C above.

**“QAP”** means the **“Low Income Housing Tax Credit Program Qualified Allocation Plan”** adopted by TCAC in accordance with the standards and procedures of Internal Revenue Code Section 42(m), and the rules and regulations adopted by such Committee from time to time for the implementation thereof.

**“Relocation Plan”** has the meaning set forth in Section 6.2.

“**Schedule of Performance**” means the Schedule of Performance attached hereto as Exhibit B.

“**Scope of Development**” means the characteristics of the Project described in Exhibit C attached to this Agreement, which is incorporated by this reference.

“**Senior Lender**” means the Construction Lender or the Take-Out lender, as the context requires, and their successors and assigns.

“**Senior Loan**” means the Construction Loan or the Take-Out Loan as the context requires.

“**Senior Loan Security Documents**” means the documents and instruments required by the Senior Lender to secure the Senior Loan.

“**State Tax Credit**” has the meaning set forth in Section 7.1(b).

“**Take-Out Lender**” means the lending institution that makes the Take-Out Loan and its successors and assigns.

“**Take-Out Loan**” means the long-term loan made by the Take-Out Lender to Partnership in order to take out the Construction Loan.

“**Tax Credits**” means the Federal Tax Credits and, if applicable, State Tax Credits required to finance the Project in the manner contemplated in the Preliminary Project Budget.

“**Tax Credit Funds**” has the meaning set forth in Subdivision 8.4(c)(ii).

“**TCAC**” means the California Tax Credit Allocation Committee.

“**Title Company**” means Fidelity National Title Company or such other title insurance company agreed to by Partnership and the Director of Community Development.

“**True Debt Test**” means the federal tax test, as applied by the Partnership’s tax counsel and based on financial projections approved by the such tax counsel, showing that the City Subordinate Loan can be repaid in full on or prior to the earlier to occur of (a) the maturity date of the City Subordinate Loan Note, or (b) the expiration of the term of the Ground Lease.

**1.2 Singular and Plural Terms.** Any defined term used in the plural in this Agreement shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

**1.3 Accounting Principles.** Any accounting term used and not specifically defined in this Agreement shall be construed in conformity with, and all financial data

required to be submitted under this Agreement shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to the City.

**1.4 References and Other Terms.** References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The terms “*including*” and “*include*” mean “*including (include) without limitation*”.

**1.5 Exhibits Incorporated.** All attachments to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

## **2. PARTIES.**

**2.1 City.** The City is the City of Sunnyvale and any successor to its rights, powers and responsibilities. The principal offices of the City are located at 456 West Olive Avenue, Sunnyvale, California 94086

**2.2 Partnership.** The Partnership is Sunnyvale Block 15 Housing Partners, L.P., a California limited partnership. The principal offices of Partnership are located at c/o The Related Companies of California, 18201 Von Karman Avenue, Suite 900, Irvine, California, 92612.

## **3. SCHEDULE OF PERFORMANCE.**

A Schedule of Performance for the Project is attached hereto as Exhibit B. The Schedule of Performance sets forth the times by which the parties are to perform certain obligations under this Agreement. The Schedule of Performance may be modified from time to time by written agreement of Partnership and the City which agreement may be approved by Director of Community Development in accordance with Section 24 of this Agreement, provided, however, extensions of the times for performance set forth in Section 7.5 must be approved by the City Manager, in the City Manager's sole discretion.

## **4. LAND USE ENTITLEMENTS.**

**4.1 Application Submission.** By the time set forth in Exhibit B, the Partnership shall submit a substantially complete planning application for such land use entitlements, design review and related discretionary approvals as may be necessary to allow Partnership to develop the Property in the manner contemplated by this Agreement, which shall include a parcel map to merge the existing Parcels (the “Land Use Entitlements”). From and after such filing, Partnership shall prosecute such applications to completion. The Partnership shall use commercially reasonable efforts to obtain the Land Use Entitlements in time to permit submission by the Partnership of a 9% Tax Credit application to TCAC for the first round of Tax Credits in 2020. The

Partnership shall be obligated to pay the City's standard fees associated with any planning applications.

#### **4.2 Governmental Approvals.**

(a) The Partnership acknowledges that the Land Use Entitlements require permits and approvals from the City, acting in its regulatory capacity exercising its police powers. The Partnership acknowledges that execution of this Agreement by the City does not constitute approval by the City building or community development departments, or approval by the planning commission or City Council, of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation and approval process.

(b) The Partnership further acknowledges that the City retains discretion under the California Environmental Quality Act and applicable planning and zoning law. Before action on the Project by the City with regard to the Land Use Entitlements, the City retains full discretion to (i) make such modifications to any entitlements, permits or approvals as may be necessary to impose feasible measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided, (iv) determine not to proceed with the Project in the event there are substantial environmental impacts that cannot be mitigated so the Project can be approved without a statement of overriding considerations, or (v) take such other actions to approve or not approve the Project consistent with their lawful exercise of discretion.

(c) The City will process Land Use Entitlement applications in a timely manner, consistent with standard city goals and practices.

**4.3 Article XXXIV.** The City has provided a letter from the County of Santa Clara confirming that there is outstanding authority under Article XXXIV of the California Constitution pursuant to the County-wide election to engage in the transactions contemplated by this Agreement, including the development of ninety (90) units of affordable housing on the Property.

### **5. DESIGN REVIEW PROCESS.**

**5.1 Scope of Development.** The Partnership shall develop the Property substantially in conformance with the Scope of Development attached hereto as Exhibit C. Plans for the Project shall be consistent with the Land Use Entitlements.

**5.2 Construction Permit Review.** Following receipt of a reservation of Tax Credits, the Partnership shall submit a complete Building Permit application including a demolition permit and an application for engineering approvals for a final parcel map, and any related ministerial applications required for the Project in order to obtain permits required to start construction on a schedule reasonably calculated to permit a Building Permit to issue by the time provided in the Schedule of Performance for



Construction Loan Closing. City will process applications in a timely manner, consistent with standard city goals and practices.

**5.3 Project Architect.** Steinberg Architects, LLP is approved as the “Project Architect”. The Director of Community Development shall have the right to approve any replacement for the Project Architect.

## **6. DEMOLITION; RELOCATION**

**6.1 Demolition and Remediation.** Following the Close of Escrow, the Partnership shall demolish all existing structures on the Property and remove all debris associated with such demolition.

### **6.2 Relocation.**

(a) The City hereby represents and warrants to the Partnership that (i) the only structures on the Property that are currently occupied are the structures located on a portion of the Property currently identified as 406 Charles Street and 377 Mathilda Avenue (the “Currently Occupied Structures”), and (ii) a true, correct and complete list of all the leases and rental agreements (including all amendments and modifications thereto) currently in effect with respect to the Currently Occupied Structures is set forth on Exhibit K attached hereto and incorporated herein by this reference. The Partnership shall prepare a relocation plan for tenants of the Currently Occupied Structures (the “Relocation Plan”) and shall submit the Relocation Plan to the City for approval, which approval shall not be unreasonably withheld, conditioned or delayed. Following approval of the Relocation Plan, the Partnership shall provide relocation assistance in accordance with the Relocation Plan to tenants occupying the Currently Occupied Structures as of the Date of this Agreement. From and after the Date of this Agreement, the City will not (x) create or permit occupancy of any structure on, or portion of, the Property other than the Currently Occupied Structures, (y) create or permit occupancy of the Currently Occupied Structures, following relocation or termination of occupancy of any current tenants, and/or (z) amend or modify any lease or rental agreement currently in effect with respect to any of the Currently Occupied Structures without the consent of the Partnership, which may be withheld in the Partnership’s sole and absolute discretion. The Partnership acknowledges that despite any waivers or post-acquisition acknowledgements that may have been signed by the occupants of the Currently Occupied Structures, the City expects the Partnership to provide relocation benefits to the occupants of the Currently Occupied Structures in accordance with California relocation laws including Government Code Section 7260 et seq. and the California Relocation Assistance and Real Property Acquisition Guidelines, including providing replacement housing payments in accordance with Title 25 of the California Code of Regulations Section 6104.

(b) The City shall cooperate with the Partnership (and its relocation consultants) in sending any notices to tenants of the Currently Occupied Structures which are necessary or desirable to effectuate the Relocation Plan, but the Partnership shall be solely responsible for the relocation of any occupants of the Currently Occupied

Structures, including the payment of any relocation benefits, at its sole cost and the City shall have no responsibility for the payment of any relocation benefits or the provision of relocation housing or services to the occupants of the Currently Occupied Structures. The Partnership hereby agrees to indemnify, defend and hold harmless the City Indemnitees against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Partnership's failure to pay relocation benefits to current occupants of the Currently Occupied Structures required by law, including, but not limited to, any relocation obligations required to be paid to such tenants or occupants. This defense, hold harmless and indemnity obligation shall not extend to any claim arising solely from the City's gross negligence or willful misconduct, or otherwise arising out of the City's breach of any of its representations and warranties set forth in this Agreement. The Partnership's obligation to indemnify, defend and hold harmless under this Section shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

## 7. FINANCING FOR THE PROJECT.

**7.1 Financing Plan.** It is contemplated that Partnership will finance the Project through a combination of:

(a) Twenty-three (23) project-based Section 8 vouchers under an Agreement to enter a Housing Assistance Payment Contract provided by the Housing Authority of the County of Santa Clara to be entered into at the Construction Loan Closing;

(b) Partnership equity, consisting of equity raised by the sale to reputable investors of the low-income housing credit obtained pursuant to 26 U.S.C. §42 (the "Federal Tax Credit");

(c) Partnership equity, consisting of equity raised by the sale to reputable investors of the low-income housing credit obtained pursuant to California Revenue and Taxation Code Section 12206 (the "State Tax Credit"), if such State Tax Credits are available with respect to the Project;

(d) the Senior Loan; and

(e) as more particularly provided in Section 12.1, the City Subordinate Loan.

(collectively, the "Project Financing"). The Partnership and the City acknowledge and agree that, as of the Date of this Agreement, the final Project Financing has not been completely identified or obtained. Prior to the Close of Escrow, the Partnership shall submit to the City the final Project Financing for the Project, and such final Project Financing shall be subject to approval by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City's approval of the Evidence of Financing described in Section 7.4 below shall constitute the City's approval of the final Project Financing for all purposes.

**7.2 Preliminary Project Budget.** Attached hereto as Exhibit D are the following preliminary budgetary materials for the Project:

- (a) The preliminary project budget for the Project, adopted by the Partnership and the City as of the Date of this Agreement (the "Preliminary Project Budget");
- (b) Sources and Uses of Funds Statement;
- (c) Net Operating Income Projection; and
- (d) First Year Operating Budget.

Prior to the Construction Loan Closing, the Partnership, as additional information becomes available, shall promptly revise the foregoing budgetary materials to reflect the best information then available to the Partnership, and shall submit the revised documents to the Director of Community Development for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

**7.3 Final Project Budget.** Prior to the Construction Loan Closing, and as more particularly provided in Section 8.4(b), the City and the Partnership shall agree on the Final Project Budget to replace the preliminary project budget attached hereto as Exhibit D.

**7.4 Financing Commitments.** The Partnership shall use commercially reasonable efforts to obtain, by the earliest reasonable date, financing for the Project, including, without limitation, (a) applying to lenders at the earliest reasonable opportunity for the Senior Loan, and (b) timely filing, beginning with the first round for which applications are due not less than thirty (30) days following the date on which the Land Use Entitlements have first been secured, applications for State Tax Credits (if applicable) and Federal Tax Credits with TCAC. If efforts to obtain Tax Credits are not successful in the first submission made with respect to the Project, the Partnership shall continue to apply for Tax Credits for two additional rounds or until successful or such earlier date as this Agreement terminates; provided, that, following any unsuccessful submission for Tax Credits by the Partnership, either the Partnership or the City may request a meeting to confer on submitting the Project for a tax exempt bond allocation to the California Debt Limit Allocation Committee and a reservation of 4% Federal Tax Credits. If the Partnership is not successful in receiving an allocation of tax credits after three application rounds, the Partnership and the City shall meet and confer regarding options for a feasible financing plan for the Project. If the Partnership and the City cannot agree upon a feasible financing plan for the Project after meeting and conferring either party can terminate this Agreement. The Partnership shall provide the City with written notice of each application of Tax Credits and the results of each application within ten (10) days after allocations are made by TCAC. Not later than the time provided in the Schedule of Performance, the Partnership shall submit to Director of Community Development for approval preliminary commitments for the Project Financing, other than the City Subordinate Loan (the "Evidence of Financing"). The City

shall, without any obligation to incur any cost or expense, provide Partnership with all appropriate assistance in applying for any of the Project Financing.

**7.5 DDA Extension.** If the Partnership fails to obtain a preliminary reservation of Tax Credits by the third anniversary of the Date of this Agreement (the “DDA Deadline Date”) despite use of good faith efforts to obtain such a preliminary reservation, the Partnership may request an extension of the DDA Deadline Date by submitting a request to the Director of Community Development. Any such extension shall be approved in the sole discretion of the City Manager, provided, however, any extension of longer than one year must be approved by the City Council.

## **8. GROUND LEASE OF PROPERTY.**

### **8.1 Basic Terms of Ground Lease.**

(a) Subject to the conditions set forth in Section 8.4, the City shall ground lease to the Partnership and, subject to the conditions set forth in Section 8.6, the Partnership shall ground lease from the City, the Property pursuant to the “Ground Lease” attached hereto as Exhibit E. The Ground Lease shall be for a term of between 57 and 67 years. The Ground Lease shall commence at Construction Loan Closing. Concurrent with execution of the Ground Lease, the City and the Partnership shall enter into a lease rider agreement in a form acceptable to TCAC.

(b) Pursuant to the terms of the Ground Lease, the Partnership shall pay rent thereunder in the amount of \$1.00 per year on each anniversary of the commencement of the term of the Ground Lease.

(c) In addition to the rent payable pursuant to Section 8.1(b) above, and as additional rent payable under the Ground Lease, in the event of and upon the later to occur of (i) full payment of the City Subordinate Loan Note, or (ii) the forty-fifth (45th) anniversary of the commencement date of the Ground Lease, the annual rent due under the Ground Lease shall be reset based on the fair market value of the remaining leasehold interest under the Ground Lease (taking into account the restrictions contained in the Ground Lease and/or recorded against the Project, including any regulatory agreement associated with the Tax Credits, hereinafter referred to as the “Recorded Restrictions”) as independently appraised and at an annual rental based on a percentage of such appraised value as determined by a qualified, independent appraiser (conducted by a certified appraiser reasonably acceptable to the Director of Community Development and the Partnership), who shall take into account a return on the Partnership's equity investment in the Project of no more than seven percent (7%). Such independent appraisal(s) shall determine the fair market value of the Project (but taking the Recorded Restrictions into account) at the time of such appraisal but shall also take into consideration a fair market ground lease rent over the remaining term of the Ground Lease with an objective that the City

receive over such remaining term a fair market value ground lease rent (taking the Recorded Restrictions into account) under the Ground Lease.

(d) In the event the rent under the Ground Lease is reset pursuant to the foregoing paragraph, this adjusted annual rent for the remaining term of the Ground Lease, as determined by the independent appraiser as described above, shall be used to adjust the rent due and required to be paid annually under the Ground Lease to the lesser of (1) such appraised rent for the Project, or (2) fifty percent (50%) of Net Operating Income (as defined in the Ground Lease). In any year, if the appraised value rent exceeds fifty percent (50%) of the Net Operating Income, the amount by which such appraised value rent exceeds fifty percent (50%) of Net Operating Income to be paid pursuant to this subdivision (d) in a given year shall accrue and be carried over and added to the amount of the rent to be paid in later years for the Project by the Partnership.

**8.2 Escrow.** Conveyance of the Property pursuant to the Ground Lease shall be made through the Escrow. This Agreement shall constitute escrow instructions to the Escrow Holder. The City and the Partnership shall execute such escrow instructions as are consistent with this Agreement and as may be reasonably required by the Escrow Holder.

**8.3 Term of Escrow.** The Escrow shall close concurrent with the Construction Loan Closing.

**8.4 Conditions for the City's Benefit.** The City's obligation to ground lease the Property to Partnership shall be subject to satisfaction of the following conditions precedent:

(a) **Land Use Entitlements.** Partnership has obtained the Land Use Entitlements for the Project.

(b) **Final Project Budget.** The Director of Community Development and the Partnership have approved a final budget for the Project, including, without limitation, (i) the terms and conditions of the developer fee payable by the Partnership (the "Final Project Budget"). The Final Project Budget may be revised from time to time, subject to the approval of the Director of Community Development, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) **Evidence of Financing.** The Director of Community Development has received and approved the following "Evidence of Financing":

(i) **Construction Loan.** Copies of the Construction Loan documents evidencing the obligation of the Construction Lender and such Construction Loan is prepared to close subject only to the Close of Escrow.

(ii) **Tax Credit Financing.** The Partnership's Partnership Agreement demonstrating that the Partnership has obtained an equity investment in the Partnership in an amount and with a pay-in schedule consistent with the Final Project Budget (the "Tax Credit Funds").

(iii) **Take-Out Loan Commitment.** A commitment from the Take-Out Lender, subject to reasonable and customary conditions, pursuant to which the Take-Out Lender agrees to make the Take-Out Loan to Partnership, with a term of not less than fifteen (15) years, in a sum sufficient, when added to any Tax Credit Funds to be disbursed for such purpose, to take-out the Construction Loan and any other existing short-term financing.

(d) **General Contractor.** The Partnership shall select the general contractor for the Project (the "General Contractor") through a competitive bidding process as set forth herein. The Partnership shall assemble and issue an invitation to bid (hereinafter, an "IFB") to select the lowest qualified bidder. Prior to its publication, the Partnership shall submit a draft of the IFB to the City for review to confirm compliance of the IFB with the terms of this Agreement, the Ground Lease and the City Subordinate Loan. The Partnership shall assemble a panel to select the General Contractor based on bids made in response to the IFB, which panel shall consist of representatives of The Related Companies of California, LLC, Affordable Housing Access, Inc. and the Project Architect.

(e) **Construction Contract.** The City has received a true and complete copy of a contract by and between Partnership and the General Contractor (the "Construction Contract"). The Partnership shall submit a copy of the Construction Contract to the City prior to its execution for review and approval in the City's reasonable discretion. The Construction Contract must provide that the Partnership will cause the Project to comply with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act, Section 504 of the Construction Act of 1973, Title II and/or Title III of the Americans with Disabilities Act of 1990, Title 24 of the California Code of Regulations and the Uniform Federal Accessibility Standards ("UFAS") and with any applicable prevailing wage requirements.

(f) **Final Construction Documents.** The City has approved the Final Construction Documents for the Improvements.

(g) **Completion Guaranty.** The City shall have received a duly executed completion guaranty for the Project from The SUNNYVALE BLOCK 15 HOUSING PARTNERS, L.P., a California limited partnership, substantially in the form of Exhibit J attached hereto.

(h) **Organizational Documents.** The Director of Community Development has received and approved a copy of such portions of the

organizational documents (e.g., limited partnership agreement) of Partnership as the Director of Community Development deems reasonably necessary to document the power and authority of the Partnership to perform its obligations under this Agreement.

(i) **Loan to Close.** All of the conditions to closing the City Subordinate Loan set forth in Section 13.1 have been satisfied or waived.

(j) **Building Permit.** The Building Permit for the Improvements has issued or is ready to issue upon only payment of a sum certain.

(k) **Work to Commence.** The Director of Community Development shall be reasonably satisfied that the work of the Improvements will commence not later than thirty (30) days after the Close of Escrow.

(l) **Insurance.** The City has received satisfactory evidence that the insurance required pursuant to Section 9.3 of the Ground Lease is in full force and effect.

(m) **Management Agreement.** The Director of Community Development has received and approved an executed agreement by and between the Partnership and Related Management Company, L.P., a New York limited partnership, or another reputable and experienced property manager approved by the City for management of the Project (the "Management Agreement").

(n) **Documents Executed.** The Partnership has duly executed the Ground Lease, the Memorandum of Ground Lease, the Affordable Housing Agreement and such documents have been deposited into escrow.

(o) **Representations and Warranties.** The representations of Partnership contained in this Agreement shall be correct in all material respects as of the Close of Escrow as though made on and as of that date and, if requested by the Director of Community Development, the City shall have received a certificate to that effect signed by the Partnership.

(p) **No Default.** No Event of Default by the Partnership shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by the Partnership and, if requested by the Director of Community Development, the City shall have received a certificate to that effect signed by the Partnership.

**8.5 Covenants of Partnership.** The Partnership covenants and agrees to use commercially reasonable efforts to satisfy any and all of the conditions set forth in Section 8.4 that the Partnership has not elsewhere in this Agreement expressly covenanted and agreed to satisfy, and the satisfaction of which is within the reasonable control of Partnership.

**8.6 Condition for the Partnership's Benefit.** The Partnership's obligation to ground lease the Property from the City shall be subject to satisfaction of the following condition precedent:

(a) **Title Insurance.** Title Company is prepared to issue its ALTA leasehold form policy of title insurance, with liability in the amount of the total of the equity raised from the sale of the Tax Credits plus the principal amounts of the Take-Out Loan and the City Subordinate Loan (plus any other long term debt obtained by the Partnership), showing leasehold title to the Property and fee title to the improvements located thereon vested in Partnership, subject only to the lien of the Senior Loan Security Documents, the City Subordinate Loan Deed of Trust and such other exceptions as the Partnership has determined are acceptable (the "Partnership Title Policy").

(b) **Documents Executed.** The City has duly executed the Ground Lease and Memorandum of Ground Lease, and such documents have been deposited into escrow.

(c) **Project Financing.** The City and all lenders and investors have approved the final Project Financing, the Evidence of Financing and the Final Project Budget.

(d) **Parcel Map and/or Lot Line Adjustment.** The Partnership and the City have processed a parcel map and/or lot line adjustment (as applicable) to consolidate the Property into one single parcel.

**8.7 City Right to Terminate.** Prior to the Close of Escrow, the City may terminate this Agreement by giving thirty (30) days' notice to Partnership if the Partnership has failed to satisfy any of the conditions set forth in the Schedule of Performance or in Section 8.4. Notwithstanding the foregoing, if the Partnership, during said thirty (30)-day notice period, satisfies such conditions (or makes reasonable progress toward such satisfaction and the Director of Community Development reasonably determines that the Partnership will satisfy such conditions promptly thereafter), then the City notice of termination shall be deemed nullified thereby.

**8.8 Waiver of Conditions.** The conditions set forth in Section 8.4 are for the City's benefit only and the Director of Community Development may waive all or any part of such rights by notice to the Partnership and the Escrow Holder. The conditions set forth in Section 8.6 are for the Partnership's benefit only and the Partnership may waive all or any part of such right by notice to the City and the Escrow Holder.

## **9. AFFORDABILITY COVENANTS.**

As more particularly provided in the Ground Lease and the Affordable Housing Agreement, and for the term prescribed in the Ground Lease, the dwelling units in the Project shall be rented to households whose incomes do not exceed the incomes required by the Federal Tax Credits. Without limiting the generality of the foregoing, (a) the dwelling units in the Project shall be rented to households whose incomes do not



exceed eighty percent (80%) of area median income, (b) the average incomes of tenants occupying dwelling units in the Project shall not exceed fifty percent (50%) of area median income upon initial occupancy, (c) at least nine and six-tenths percent (9.6%) of the dwelling units in the Project shall be rented to households whose incomes do not exceed thirty percent (30%) of area median income upon initial occupancy, and (d) at least twenty-five (25%) of the dwelling units in the Project shall be available as special needs housing for adults with developmental disabilities. The City and the Partnership acknowledge and agree that the affordability restrictions set forth in the Affordable Housing Agreement may be modified prior to execution of the Affordable Housing Agreement if required as part of approval by the City and the Partnership of the Final Project Budget.

## **10. PHYSICAL CONDITION OF PROPERTY.**

**10.1** The Partnership acknowledges and agrees that, upon Close of Escrow, it will lease the Property solely in reliance on its own investigation, and that no representations and/or warranties of any kind whatsoever, express or implied, have been made by the City, or by its officers, employees, representatives or agents. The Partnership further acknowledges and agrees that, as of the Close of Escrow the Partnership will be leasing the Property in "AS IS" condition with all faults and conditions then existing in and on the Property, whether known or unknown; that the Partnership is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City as to any matters concerning the Property, including without limitation: (1) the quality, nature, adequacy and physical condition of the Property (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities serving the Property; (4) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (5) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property; (6) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property unless such presence or absence of Hazardous Materials is actually known to the City; and (8) the condition of title to the Property. Notwithstanding the foregoing, the City acknowledges and agrees that neither this Section 10.1, nor any other term, provision or condition of this Agreement and/or of the Ground Lease obligates the Partnership, as between it and the City, and prior to the Construction Loan Closing, to remediate, or to incur any cost to remediate, any Hazardous Materials discovered by the Partnership or any other party on the Property prior to the Construction Loan Closing. In the event that Hazardous Materials are so discovered, disposition of the situation shall be governed by the conditions set forth in Section 10.2.

**10.2** If, prior to the Construction Loan Closing, the Partnership discovers Hazardous Materials the cost of remediation of which exceeds the limits of any applicable insurance policy, then the Partnership, subject to the condition set forth below, shall have the right, prior to the Construction Loan Closing to terminate this Agreement by thirty (30) days' notice to the City. The Partnership's right so to terminate this Agreement shall be subject to the condition precedent that the Partnership first has (x) submitted to the City any and all information then available to the Partnership as to the nature and scope of the Hazardous Materials discovered and as to the cost estimated to remediate them, if any such cost estimate exists, and (y) offered to the City the right, within fifteen (15) days after receipt of said statement, or such longer period of time as may reasonably be required by the City to obtain competitive bids for the work, to elect, at its sole and absolute discretion, to increase the principal amount of the City Subordinate Loan by the amount of the cost to remediate said Hazardous Materials. If the City so elects, then the Partnership shall not have the right to terminate this Agreement under this Section 10.2.

## **11. PROPERTY TAX EXEMPTION.**

The Partnership and the City acknowledge and agree that the Partnership intends to apply for and obtain an exemption from real property taxes under Section 214(g) of the California Revenue and Taxation Code with respect to the Project, excluding any commercial component of the Project. The Partnership shall not apply for any other property tax exemption.

## **12. CITY SUBORDINATE LOAN.**

**12.1 Amount and Purpose.** Subject to the terms and conditions of this Agreement, the City shall make a loan to the Partnership (the "City Subordinate Loan") in the principal amount of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), provided, that, in no event shall the final amount of the City Subordinate Loan exceed the amount required by the Final Project Budget approved by the City and the Partnership which, when added to the other final Project Financing, allows the Partnership's sources to equal its uses for the development of the Project. The City Subordinate Loan shall accrue interest at a rate of not more than three percent (3%) simple interest and mature on the 55<sup>th</sup> anniversary of the date the Take-Out Loan actually closes (or such later date as may be required to satisfy the True Debt Test, as mutually determined by the City and the Partnership). The City and the Partnership acknowledge and agree that (a) the amount of the City Subordinate Loan assumes that the Partnership obtains a reservation of 9% Tax Credits, and such amount may vary if the parties hereto decide to pursue an alternative financing scenario, or if cost estimates for development of the Project vary from those currently anticipated, and (b) the actual interest rate on the City Subordinate Loan shall be determined in the Final Project Budget approved by the Partnership and the Director of Community Development and shall be determined on the Project's financial feasibility and satisfaction of the True Debt Test. The City Subordinate Loan Note shall be payable out of fifty percent (50%) of Net Operating Income (as defined in the City Subordinate Loan Note) generated by the Project, with the Partnership entitled to retain the remaining 50% of such Net Operating

Income. Subject to the terms and conditions of this Agreement, the City Subordinate Loan shall close (i.e., the City Subordinate Loan Deed of Trust shall record in the Official Records and the undisbursed proceeds shall, subject to Article 15 be disbursed to the Construction Lender) concurrently with the Construction Loan Closing (the "City Subordinate Loan Closing").

**12.2 City Subordinate Loan Note and Deed of Trust.** The City Subordinate Loan shall be evidenced by the City Subordinate Loan Note and shall be secured by the City Subordinate Loan Deed of Trust. The City shall subordinate the City Subordinate Loan Deed of Trust to the Senior Loan Security Documents.

**12.3 Labor Standards.** The Partnership shall pay and will cause the contractor and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). The Partnership shall, and shall cause the its contractor and subcontractors to, comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR. The Partnership shall, and shall cause its contractor and subcontractors to, keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq. Copies of the currently applicable per diem prevailing wages are available from DIR. During the construction of the Project, the Partnership shall or shall cause its contractor to post at the Property the applicable prevailing rates of per diem wages. The Partnership shall cause its respective contractors and subcontractors to be registered as set forth in Labor Code Section 1725.5. The Partnership shall cause its respective contractors and subcontractors to do all the following: (1) all calls for bids, bidding materials and the construction contract documents for the Project shall specify that: (1) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Project unless registered with the DIR pursuant to Labor Code Section 1725.5; and (2) the Project is subject to compliance monitoring and enforcement by the DIR; (3) the Partnership is required to provide the City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>); (4) the Partnership shall cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; and (5) the Partnership shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

The Partnership agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to the City), the City Indemnitees against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Partnership, its contractors and subcontractors), if required by applicable law, to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq. to employ apprentices pursuant

to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Section 1720 et seq., 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code set forth above and the implementing regulations of the DIR in connection with the construction of the Project. The indemnification provided hereunder will survive the expiration of the term or termination of this Agreement.

The City hereby represents, warrants and covenants to Partnership that the sources of all funds used by the City to acquire the Property and make the City Subordinate Loan do not constitute federal funds.

### 13. CONDITIONS TO CLOSING OF CITY SUBORDINATE LOAN.

**13.1 Conditions Precedent to Disbursement.** The City's obligation to make the City Subordinate Loan to Partnership shall be subject to satisfaction of the following conditions precedent:

(a) **Conditions to Ground Lease.** All of the conditions precedent set forth in Section 8.4 to the City's obligation to ground lease the Property to the Partnership have been satisfied or waived.

(b) **City Subordinate Loan Note.** The Partnership shall have duly executed the City Subordinate Loan Note and delivered it to the City or the Escrow Holder.

(c) **City Subordinate Loan Deed of Trust.** The City Subordinate Loan Deed of Trust shall have been recorded in the Official Records subject only to the Permitted Encumbrances.

(d) **Affordable Housing Agreement.** The Affordable Housing Agreement shall have been recorded in the Official Records subject only to the Permitted Encumbrances.

(e) **Title Policy.** Title Company is prepared to issue its lender policy of title insurance naming the City as the insured, in a policy amount equal to the principal amount of the City Subordinate Loan, showing the Partnership as holding leasehold title to the Property and insuring the City Subordinate Loan Deed of Trust to be a valid subordinate lien on the Property (the "City Title Policy").

(f) **Representations and Warranties.** The representations of the Partnership contained in this Agreement shall be correct in all material respects as of the Close of Escrow and, if requested by the Director of Community Development, the City shall have received a certificate to that effect signed by Partnership.

(g) **No Default.** No Event of Default by the Partnership shall then exist, and no event shall then exist which, with the giving of notice or the passage

of time or both, would constitute an Event of Default by the Partnership and, if requested by the Director of Community Development, the City shall have received a certificate to that effect signed by Partnership.

**13.2 Waiver of Conditions.** The conditions set forth in Section 13.1 are for the City's benefit only and the Director of Community Development may waive all or any part of such rights by notice to Partnership.

#### **14. CLOSE OF ESCROW; EXPENSES.**

**14.1 Documents to be Delivered.** Upon receipt by the Escrow Holder of:

- (a) the City Subordinate Loan Note;
- (b) the City Subordinate Loan Deed of Trust;
- (c) the Affordable Housing Agreement
- (d) the Memorandum of Ground Lease; and
- (e) all other funds and documents required to close the Escrow in accordance with this Agreement.

and when the conditions precedent described in Sections 8.4, 8.6 and 13.1 have been satisfied or waived in writing by the Director of Community Development or the Partnership, as applicable, the Escrow Holder shall, in the following order, record in the Official Records:

- (a) the Memorandum of Lease;
- (b) the Senior Loan Security Documents;
- (c) the Affordable Housing Agreement;
- (d) the City Subordinate Loan Deed of Trust; and
- (e) such other documents required to close the Escrow in accordance with this Agreement;

and shall deliver to the City:

- (a) the City Subordinate Loan Note;
- (b) a conformed copy of the Affordable Housing Agreement;
- (c) a conformed copy of the City Subordinate Loan Deed of Trust; and
- (d) the City Title Policy;

and shall deliver to Partnership:

- (a) a copy of the City Subordinate Loan Note;
- (b) a conformed copy of the Affordable Housing Agreement;
- (c) a conformed copy of the City Subordinate Loan Deed of Trust; and
- (d) the Partnership Title Policy.

**14.2 Expenses of Partnership.** The Partnership shall pay: (a) any and all documentary transfer taxes and recording fees arising from leasehold conveyance of the Property from the City to the Partnership by the Ground Lease, (b) the Escrow fee, (c) the premium for the City Title Policy, and (d) all such other costs and expenses related to the Escrow and not expressly provided for herein.

**14.3 Instruction to Escrow Holder Regarding Waiver of Transfer Taxes and Recording Fees.** The Escrow Holder is hereby instructed to seek such waivers and exemptions from transfer taxes and recording fees as are available pursuant to Revenue and Taxation Code Section 11922 and Government Code Section 6103, respectively.

**14.4 Broker's Commissions.** The Partnership and the City each represent and warrant to the other that it has not engaged any broker, agent or finder in connection with this Agreement, and the Partnership and the City each agree to indemnify, protect, hold harmless, and defend the other party hereto from any claim by any brokers, agents or finders retained by or arising through it.

## **15. OTHER ESCROW INSTRUCTIONS.**

**15.1 Funds in Escrow.** All funds received in the Escrow shall be deposited by the Escrow Holder in a general escrow account with any state or national bank doing business in the State of California and reasonably approved by the Director of Community Development and the Partnership, and such funds may be combined with other escrow funds of the Escrow Holder. All disbursements shall be made on the basis of a thirty (30) day month.

**15.2 Failure to Close.** If the Escrow is not in condition to close on or before the time established in the Schedule of Performance, any party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, demand the return of its money, papers, or documents from the Escrow Holder. No demand for return shall be recognized until fifteen (15) days after the Escrow Holder (or the party making such demand) shall have mailed copies of such demand to the other party. Objections, if any, shall be raised by written notice to the Escrow Holder and to the other party within the 15-day period, in which event the Escrow Holder is authorized to hold all money, papers and documents until instructed by mutual agreement of the parties 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.

If objections are raised in the manner provided above, the Escrow Holder shall not be obligated to return any such money, papers or documents except upon the written instructions of both the Director of Community Development and the Partnership, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction. If no such objections are made within said 15-day period, the Escrow Holder shall immediately return the demanded money, papers or documents.

**15.3 Amendments.** Any amendment to these Escrow instructions shall be in writing and signed by the Director of Community Development or the City's counsel and the Partnership. At the time of any amendment, the Escrow Holder shall agree to carry out its duties as the Escrow Holder under such amendment.

**15.4 Notices.** All Notices from the Escrow Holder to the City or the Partnership shall be given in the manner provided in Article 22.

**15.5 Liability.** The liability of the Escrow Holder under this Agreement is limited to performance of the obligations imposed upon it under Sections 14.1, 14.3, 15.1, 15.2 and 15.3.

## **16. DISBURSEMENT PROCEDURES.**

The City Subordinate Loan, subject to the conditions set forth below, shall be disbursed in one (1) installment as follows: the City Subordinate Loan shall be disbursed in one lump sum by deposit into Escrow to be used to pay Project Costs shown on the Approved Closing Statement and, if any proceeds remain available, to be deposited with the Construction Lender for disbursement by the Construction Lender for payment of items in the Final Project Budget in accordance with the disbursement agreement to be mutually agreed upon by the City and the Construction Lender. The City's obligation to make such deposit shall be subject to the following conditions:

(i) the Director of Community Development reasonably approves the Construction Lender; and

(ii) the City and the Construction Lender enter into an agreement, reasonably satisfactory to the Director of Community Development, governing the disbursement of the City Subordinate Loan proceeds prior to disbursement of the Construction Loan proceeds; which agreement may contain reasonable and customary conditions to each disbursement.

If the conditions set forth above are not satisfied, the City shall disburse these funds prior to disbursement of the Construction Loan proceeds and according to reasonable and customary construction loan disbursement procedures consistent with disbursement of the Construction Loan proceeds.

## **17. CERTIFICATE OF COMPLETION.**

Promptly after completion of all construction and development of the Improvements in conformity with the Final Construction Documents and the Scope of

Development, the City shall furnish the Partnership with a final Certificate of Completion upon written request therefor by the Partnership. Such final Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction and development required by this Agreement upon the Property but shall not in any way be considered a representation by the City of the Project's compliance with building codes, Land Use Entitlements, or any City regulatory requirements.

The Certificate of Completion shall be in such form as to permit it to be recorded in the Official Records of the County.

If, after written request therefor from the Partnership, the City refuses or fails to furnish the applicable Certificate of Completion, the City shall, within sixty (60) days after the written request, provide the Partnership with a detailed written statement of the reasons the City refused or failed to furnish the Certificate of Completion. The statement shall also contain the City's opinion of the action the Partnership must take to obtain the Certificate of Completion. If the reason for such refusal is confined to either (a) the immediate unavailability of specific items or materials for landscaping, or (b) the need only to complete "*punch list*" items, the City shall issue the Certificate of Completion upon the posting of a bond by the Partnership with the City in an amount representing the fair value of the work not yet completed. If the City shall have failed to provide such written statement within said 60-day period, the Partnership shall be deemed unconditionally entitled to the Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Partnership to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the Improvements or compliance with the prevailing wage requirements applicable to the Project. Such Certificate of Completion shall not be notice of completion as referred to in Section 3093 of the California Civil Code.

## **18. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS.**

**18.1 Partnership Formation, Qualification and Compliance.** The Partnership (a) is validly existing and in good standing under the laws of the State of California, (b) has all requisite authority to conduct its business and own and lease its properties, (c) has all requisite authority to execute and perform its obligations under this Agreement.

**18.2 Litigation.** The Partnership represents and warrants that there are no material actions, lawsuits or proceedings pending or, to the best of the Partnership's knowledge, threatened against or affecting the Partnership, the adverse outcome of which could have a material adverse effect on the Partnership's ability to perform its obligations under this Agreement.

**18.3 Hazardous Materials.** The City represents and warrants that, to its knowledge, there are no Hazardous Materials located on, under or about the Property or any adjoining or neighboring property.



**19. INDEMNIFICATION AND INSURANCE.**

**19.1 Nonliability of the City.** The Partnership acknowledges and agrees that:

(a) Notwithstanding any other provision of this Agreement: (i) the City is not a partner, joint venturer, alter-ego, manager, controlling person or other business associate or participant of any kind of Partnership and the City does not intend to ever assume any such status; (ii) the City shall not be deemed responsible for or a participant in any acts, omissions or decisions of Partnership;

(b) Unless arising as a result of the City's gross negligence or intentional misconduct, the City shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Property whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of the Partnership or any of the Partnership's agents, employees, contractors, licensees or invitees; or (iii) any accident on the Property or any fire or other casualty or hazard thereon not caused by the Indemnitees; and

(c) By accepting or approving anything required to be performed or given to under this Agreement, including any certificate, financial statement, survey, appraisal or insurance policy, the City shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by the City to anyone.

**19.2 Indemnity.**

(a) Except with respect to Hazardous Materials found to exist on the Property as of the Date of this Agreement, the Partnership shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the Director of Community Development) the City Indemnitees from and against any and all losses, costs, claims, expenses, damages (including, without limitation, foreseeable or unforeseeable consequential damages) and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising from, related to, or as the result of (a) the death of any person, (b) damage, injury or loss to any person, or (c) damage or injury to any property, in any case occurring or resulting from the use, occupancy or development of the Property pursuant to this Agreement, the activities of the Partnership or its officers, directors, employees, agents, servants or contractors, except to the extent caused by the Indemnitees' negligence or willful misconduct. This indemnity shall survive termination of this Agreement and issuance of the Certificate of Completion.

(b) The Partnership shall indemnify, defend (with counsel chosen by City and reasonably acceptable to the Partnership), and hold harmless the City

Indemnitees from and against all third party suits, actions, claims, causes of action, costs, demands, judgments, liens, damage, cost, expense or liability the Indemnitees may incur directly or indirectly arising out of or attributable to any Hazardous Materials on the Property arising as a result of events occurring after the Close of Escrow, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Property or the Project, and the preparation and implementation of any closure, remedial or other required plans, and (2) all reasonable costs and expenses incurred by the City Indemnitees in connection with clause (1), including but not limited to, reasonable attorneys' fees. The defense, hold harmless and indemnity obligations contained in this Section 19.3 shall not extend to any claim arising solely from a City Indemnitee's gross negligence or willful misconduct. The Partnership's obligation to indemnify, defend and hold harmless under this Section 19.3 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

## 20. DEFAULTS AND REMEDIES.

**20.1 Event of Default.** Any of the following events or occurrences with respect to either party shall constitute a material breach of this Agreement and, after the expiration of any applicable cure period, shall constitute an "Event of Default" by such party:

(a) The failure by either party to pay any amount in full when it is due under this Agreement, if the failure has continued for a period of fifteen (15) days after the party entitled to payment demands in writing that the other party cure that failure.

(b) The failure by either party to perform any other obligation under this Agreement, including, without limitation, the other Project Documents, if the failure has continued for a period of thirty (30) days after demand in writing that such party cure the failure. If, however, by its nature the failure cannot reasonably be cured within thirty (30) days, such party may have such longer period of time as is reasonably necessary to cure the failure, provided, however, that such party commences said cure within said thirty (30)-day period, and thereafter diligently prosecutes said cure to completion.

**20.2 No Waiver.** Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default, or of any such rights or remedies, or deprive any 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.

**20.3 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 any party of one or more of such rights or

remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by another party. Without limiting the generality of the foregoing, if this Agreement is terminated by the City following an Event of Default by the Partnership after expiration of any applicable cure period, in addition to any other remedies to which the City may be entitled, the Partnership, at no cost to the City, shall deliver to the City copies of any project documents, construction plans, and studies in the Partnership's possession or to which the Partnership is entitled related to construction of the Project on the Property and shall use commercially reasonable efforts to obtain appropriate permission for City to utilize the documents.

## **21. TERMINATION WITHOUT FAULT.**

In addition to any other termination rights expressly set forth in this Agreement, the Partnership may terminate this Agreement in accordance with the following:

**21.1** After the time provided in the Schedule of Performance to secure the Land Use Entitlements (or such earlier date as the parties mutually agree that the Land Use Entitlements will not be issued by the time provided in the Schedule of Performance), but prior to the Construction Loan Closing, the Partnership may terminate this Agreement by giving thirty (30) days' notice to the City if, despite having made all commercially reasonable efforts, the Partnership is unable, by the time provided in the Schedule of Performance, to secure the Land Use Entitlements. Notwithstanding the foregoing, if the Partnership gives notice to the City pursuant hereto, and if the Land Use Entitlements are secured during the thirty (30)-day notice period, the Partnership's notice of termination shall be deemed nullified thereby.

**21.2** Prior to the Construction Loan Closing, the Partnership may terminate this Agreement by five (5) business days' notice to the City if it has been unable, by the time provided in the Schedule of Performance, to obtain City's approval of the Final Construction Documents for the Project and, as a result thereof, the Partnership loses all or any material part of the Project Financing.

**21.3** If the Partnership fails to obtain a preliminary reservation of Tax Credits by the DDA Deadline Date as the same by extended in accordance with Section 7.5 above, this Agreement shall terminate and be of no further force or effect.

**21.4** Prior to the Construction Loan Closing, the Partnership may terminate this Agreement by giving written notice to the City if, despite having obtained a preliminary reservation of Tax Credits for the Project and despite its commercially reasonable efforts, it has been unable to obtain the balance of the Project Financing on terms and conditions reasonably acceptable to the Partnership.

**21.5** Prior to the Close of Escrow, the Partnership may terminate this Agreement by giving written notice to the City if, despite having made its commercially reasonable efforts, it has been unable to satisfy any of the conditions precedent set forth in Section 8.4 or Section 8.6 hereof. Notwithstanding the foregoing, (a) if the City, during said thirty (30)-day notice period, satisfies such conditions (or makes reasonable progress toward such satisfaction and the Partnership reasonably determines that the City will satisfy such conditions promptly thereafter) and the satisfaction of such conditions does not occur after termination or expiration of any financing commitment obtained by the Partnership for the Project, then the Partnership notice of termination shall be deemed nullified thereby, and (b) the Partnership shall have no right to terminate this Agreement for City's failure to satisfy the conditions set forth in Section 8.4 or Section 8.6 if such failure is due to the fault of Partnership.

**21.6** Prior to the Close of Escrow, the Partnership may terminate this Agreement upon the discovery of Hazardous Materials as set forth in Section 10.2 above.

## **22. NOTICES.**

All notices, consents, demands, approvals and other communications (the "Notices") that are given pursuant to this Agreement shall be in writing to the appropriate party and shall be deemed to have been fully given when delivered, including delivery by commercial delivery service, or if deposited in the United States mail, certified or registered, postage prepaid, when received or refused. All Notices shall be addressed as follows:

If to the Partnership: \_\_\_\_\_ Housing Partners, L.P.  
c/o The Related Companies of California  
18201 Von Karman Avenue, Suite 900  
Irvine, California 92612  
Attn: Frank Cardone

If to the City: City of Sunnyvale Community Development  
Department  
456 West Olive Avenue  
Sunnyvale, CA 94086  
Attn: Director of Community Development

Addresses for notice may be changed from time to time by notice to all other parties. Notwithstanding that Notices shall be deemed given when delivered, the nonreceipt of any Notice as the result of a change of address of which the sending party was not notified shall be deemed receipt of such Notice.

## **23. ASSIGNMENT.**

Except as otherwise expressly provided to the contrary in this Agreement, the Partnership shall not assign any of its rights or delegate any of its duties under this

Agreement without the prior written consent of the Director of Community Development which shall be granted or withheld in the Director of Community Development's sole discretion. Notwithstanding the foregoing, the admission of an affiliate of Affordable Housing Access, Inc. (or another nonprofit corporation selected by the Partnership or affiliate thereof) as the managing general partner of the Partnership shall not violate the terms of this Agreement or require the consent of the City.

## **24. ADMINISTRATION.**

Following approval of this Agreement by the City, this Agreement shall be administered and executed on behalf of the City by the City Manager. The City Manager shall have the authority to issue interpretations, waive terms and conditions and approve amendments to the Schedule of Performance on behalf of the City provided that such actions do not substantially change the uses or development permitted of the Property, the DDA Deadline Date, extend any other deadline by more than one year, change the affordability restrictions, or materially add to the costs of the City provided herein. All other waivers or amendments shall require the formal consent of the City.

## **25. MISCELLANEOUS.**

**25.1 Counterparts.** This Agreement may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

**25.2 Prior Agreements; Amendments; Consents.** This Agreement and the Project Documents contain the entire agreement between the City and the Partnership with respect to the Property, and all prior negotiations, understandings and agreements are superseded by this Agreement. No modification of this Agreement (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given.

**25.3 Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Assuming proper service of process, the Partnership and the City waive any objection regarding personal or in rem jurisdiction and agree that venue shall be proper in the County of Santa Clara, California.

**25.4 Severability of Provisions.** No provision of this Agreement that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of this Agreement are hereby declared to be severable.

**25.5 Headings.** Article and section headings are included in this Agreement for convenience of reference only and shall not be used in construing this Agreement.

**25.6 Time of the Essence.** Time is of the essence of this Agreement.

**25.7 Conflict of Interest.** No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

**25.8 Warranty Against Payment of Consideration.** The Partnership warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

**25.9 Nonliability of City Officials and Employees.** No member, official or employee of the City shall be personally liable to the Partnership, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Partnership or successor, or on any obligation under the terms of this Agreement.

**25.10 Submission of Documents and Other Matters for Approval.** Whenever this Agreement requires either party to submit plans, drawings, documents or other matters to the other party for approval, and there is no time specified herein for such approval, the submitting party may submit a letter requiring approval or rejection by the other party of the documents or matter submitted within thirty (30) days after submission, and unless rejected within the stated time such documents or matter shall be deemed approved. Except where such approval is expressly reserved to the sole discretion of the approving party, all approvals required hereunder by either party shall be reasonable and not unreasonably withheld, conditioned or delayed.

**25.11 Force Majeure.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; casualties; natural disasters that are not caused by and are outside the reasonable control of the party claiming extension of the time to perform, including, without limitation, floods, earthquakes and fires; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; litigation beyond the reasonable control of a party; acts or the failure to act of any public or governmental entity (except that acts or the failure to act of the City or any of its departments or agencies shall not excuse performance by the City). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause, if such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice. In the event the other party rejects such notice, the parties shall meet and confer in good faith for a period of at least thirty (30) calendar days. In no event shall the cumulative period of delay under this Section 25.11 exceed one (1) year.

Force Majeure shall serve also to extend the time by which any condition, for the benefit of either party, shall be satisfied under this Agreement.

*[remainder of page intentionally left blank]*

*[signature page next page]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

**PARTNERSHIP:**

\_\_\_\_\_ **HOUSING PARTNERS, L.P.**,  
a California limited partnership

By: **RELATED/\_\_\_\_\_ DEVELOPMENT CO.,  
LLC**, a California limited liability company, its  
administrative general partner

By: \_\_\_\_\_  
Frank Cardone, President

*[signatures continue on next page]*



**CITY:**

**CITY OF SUNNYVALE,**  
a municipal corporation

By: \_\_\_\_\_  
Its City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_

\_\_\_\_\_

City Attorney

**LIST OF EXHIBITS**

- A - Legal Description
- B - Schedule of Performance
- C - Scope of Development
- D - Preliminary Project Budget
- E - Ground Lease
- F - City Subordinate Loan Note
- G - City Subordinate Loan Deed of Trust
- H - Affordable Housing Agreement
- I - Form of Memorandum of Ground Lease
- J - Form of Completion Guaranty
- K - List of Leases for Currently Occupied Structures

**DDA EXHIBIT A****LEGAL DESCRIPTION OF PROPERTY**

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA DESCRIBED AS FOLLOWS:

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

General Description and APNs of the Property

The Property includes the following parcels in the City of Sunnyvale, within Santa Clara County, California:

Situs Address(es)	Assessor's Parcel Number (APN)
388 Charles St., Sunnyvale CA 94086	165-130-74
396 Charles St., Sunnyvale CA 94086	165-130-46
397 S. Mathilda Ave., Sunnyvale CA 94086	165-130-68
402 Charles St., Sunnyvale CA 94086	165-130-45
406 Charles St. and 407 S. Mathilda Ave., Sunnyvale CA 94086	165-130-73
403 S. Mathilda Ave. Sunnyvale CA 94086	165-130-69

## DDA EXHIBIT B

## SCHEDULE OF PERFORMANCE

<u>Task/Event</u>	<u>Time for Performance</u>
1. <b><u>Community Outreach Plan.</u></b> The Partnership shall submit a Community Outreach Plan to the City.	Not later than 14 calendar days after the Date of the Agreement
2. <b><u>CEQA/Land Use Entitlements.</u></b> Per Article 4, Partnership shall use commercially reasonable efforts to cause the Land Use Entitlements to be obtained.	Partnership shall submit a substantially complete application for Land Use Entitlements no later than April 10, 2019, with only one 30-day extension, subject to City Manager approval
3. <b><u>Tax Credit Application.</u></b> Per Section 7.4, Partnership shall attempt to secure 9% Tax Credit Financing.	Partnership shall submit application for Tax Credits no later than the first round of TCAC application in 2020.
4. <b><u>Submission of Final Construction Documents to City.</u></b> Partnership shall submit to City for plan check the complete construction documents for the Project (e.g. building permits, Parcel Map, improvement plans).	Not later than 105 calendar days after receipt by Partnership from TCAC of a reservation of Tax Credits for the Project. (City is available if Partnership desires a pre-application meeting during the 105 days. The pre-application meeting can assist the Partnership design team in preparing complete plans).
5. <b><u>Partnership/Submission of Marketing Plan.</u></b> The Partnership shall submit a Marketing Plan to the City.	Not later than 30 calendar days after submission of final construction plans to the City
6. <b><u>Partnership/Project Financing.</u></b> Per Section 7.4, Partnership shall submit to the Director of Community Development for approval preliminary commitments for Project Financing.	Not later than 120 calendar days after receipt by Partnership from TCAC of a reservation of Tax Credits for the Project.
7. <b><u>Final Project Budget.</u></b> Per Section 7.3, City and Partnership shall agree on Final Project Budget.	Not later than ten 10 business days after receipt the City will approve, conditionally approve, or disapprove Partnership's Final Project Budget. Any changes to the financing plan that require City Council approval will be scheduled for a City Council hearing within 2 months of the request.
8. <b><u>Approval of Final Construction Documents.</u></b> Per Section 5.2, Partnership	Not later than 5 business days prior to the TCAC Readiness to Proceed deadline. Partnership should allow minimum 5 months

## DDA EXHIBIT B

shall receive building permits for the Project. for issuance of the Building Permit.

9. **Partnership/Satisfaction of Final Conditions and Close of Escrow.** The Partnership shall cause the conditions set forth in Sections 8.3 and 13.1 to be satisfied and Close of Escrow. Not later than one (1) calendar day prior to the TCAC Readiness to Proceed deadline.

10. **Partnership/Construction of Project.** The Partnership shall commence construction of the Project. Not later than thirty (30) calendar days after Close of Escrow.

11. **Partnership/Construction Completion.** The Partnership shall complete construction of the project. Within 22 months After Close of Escrow

If Partnership fails to satisfy any obligation by the deadline set forth above, Partnership shall not be in default under this Agreement unless Partnership has first been given written notice of such failure and an opportunity to cure pursuant to Section 20.1.

**DDA EXHIBIT C**  
**SCOPE OF DEVELOPMENT**

The development shall consist of a 90-unit affordable housing community on approximately 1.44 acres in the City of Sunnyvale. Twenty-five (25) percent of the residential units shall be designated for special needs households serving adults with developmental disabilities, with affordability levels at least as great as provided in the Affordable Housing Agreement.

All parking required to serve the proposed development shall be provided in an underground parking structure.

The Project will offer an onsite property management office and resident service coordinator office as well as recreational amenities including a community/multipurpose room, onsite laundry, outdoor courtyard, and other open space. The office space and interior amenities will be no less than 4,000 sq. ft. of floor area. There will also be an additional minimum 1,500 sq. ft. of floor area that may be used as either resident-serving or commercial space. In accordance with the Downtown Specific Plan design guidelines, approximately 2,000 sq. ft. of commercial/resident-serving floor area shall be located at the corner of Iowa Avenue and Mathilda Avenue and be of double height space oriented toward Mathilda Avenue wrapping the corner at Iowa Avenue a minimum of 20 ft.

**DDA EXHIBIT D**  
**PRELIMINARY PROJECT BUDGET**

**Sunnyvale Block 15 – Preliminary Financing Plan**

Updated October 2018

<b>PERMANENT SOURCES</b>	<b>Amount</b>
9% Tax Credits & Tax Exempt Bonds	\$ 24,747,525
Tranche A - Permanent Loan	\$ \$8,863,000
Tranche B - Project Based Section 8 Vouchers supported Loan	\$ 3,064,000
City of Sunnyvale Loan	\$ 12,500,000
To-be-determined Soft Sources	\$ 3,800,086
<b>Total</b>	<b>\$ 52,974,611</b>

The City and the Partnership acknowledge and agree that the affordability restrictions set forth below may be modified prior to execution of the Ground Lease if required as part of approval by the City and the Partnership of the Final Project Budget.

The Partnership shall use the Property and the Improvements as rental housing and ancillary purposes with 90 total units, used as follows:

- the dwelling units in the Project shall be rented to households whose incomes do not exceed eighty percent (80%) of area median income, excluding on (1) manager's unit;
- the average incomes of tenants occupying dwelling units in the Project shall not exceed fifty percent (50%) of area median income upon initial occupancy;
- regardless of any income averaging, at least nine and six-tenths percent (9.6%) of the dwelling units in the Project shall be rented to households whose incomes do not exceed thirty percent (30%) of area median income upon initial occupancy; and
- at least twenty-five (25%) of the dwelling units in the Project shall be available as special needs housing for adults with developmental disabilities.

**DDA EXHIBIT E  
GROUND LEASE**

**Sunnyvale Block 15 - Housing Project**

**By and Between**

**CITY OF SUNNYVALE,**

**“Landlord”**

**and**

\_\_\_\_\_ **HOUSING PARTNERS, L.P.**

**“Tenant”**

**Dated as of \_\_\_\_\_, 201\_\_**



## DDA EXHIBIT E

**GROUND LEASE**

**THIS GROUND LEASE** (the "Lease"), dated, for identification purposes only, as of \_\_\_\_\_, 201\_, is entered into by and between the **CITY OF SUNNYVALE**, a municipal corporation ("Landlord" or "City"), and \_\_\_\_\_ **HOUSING PARTNERS, L.P.**, a California limited partnership ("Tenant" or "Developer").

**R E C I T A L S**

A. **WHEREAS**, Developer is controlled by an experienced owner, developer and manager of affordable housing for low and moderate-income households;

B. **WHEREAS**, the City is the owner of certain real property situated in the City of Sunnyvale, County of Santa Clara, State of California, and legally described in Exhibit A (the "Property");

C. **WHEREAS**, the City and Developer entered into that certain "Disposition and Development Agreement" dated as of \_\_\_\_\_, 2018 (the "DDA");

D. **WHEREAS**, the DDA provided that upon the satisfaction of certain conditions, the City would ground lease the Property to Developer; and

E. **WHEREAS**, all conditions precedent to the parties entering into this Lease have been satisfied or waived.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions herein contained, the City and Developer agree as follows:

**ARTICLE 1. LEASE OF THE PROPERTY.**

1.1 **Lease of the Property**. Landlord leases to Tenant, and Tenant hires from Landlord, the Property on the terms and conditions as set forth in this Lease.

1.2 **Purpose of Lease**. The purpose of this Lease is to provide for the construction, maintenance, management and operation of a 90-unit low-income rental housing project. Tenant will not occupy or use the Property, or permit the Property to be used or occupied, nor do or permit anything to be done in or on the Property, in whole or in part, for any other purpose.

1.3 **Recorded Encumbrances**. This Lease, the interests of Landlord and Tenant hereunder, and the Property, are in all respects subject to and bound by all of the covenants, conditions, restrictions, reservations, rights, rights-of-way and easements of record.

1.4 **Memorandum of Lease**. A short form Memorandum of Lease referring to this Lease is being executed by Landlord and Tenant concurrently herewith, and recorded in the Official Records of the County of Santa Clara, California (the "Official Records").

## DDA EXHIBIT E

1.5 **Assignment of Utility Rights.** Landlord, by virtue of its fee title to the Property, may hold certain rights, entitlements or credits with respect to utility capacity, connections, etc. (the "Utility Rights"). Landlord hereby assigns said Utility Rights to Tenant as an incidence of its leasehold interest in the Property.

**ARTICLE 2. DEFINITIONS.**

All capitalized terms used herein may be defined where first used in this Lease and/or as set forth in this Article 2. Unless otherwise defined herein, all capitalized terms shall have the same meanings ascribed to them in the DDA. For the purpose of supplying such definitions, the DDA, notwithstanding anything contained therein or herein to the contrary, shall not merge with this Lease.

**"Affordable Housing Agreement"** means the regulatory agreement memorializing Landlord's affordable housing requirements for the Project to be recorded in the Official Records against the Tenant's leasehold estate in the Property. The Affordable Housing Agreement shall be junior and subordinate to the Construction Loan and the Take-Out Loan.

**"Annual Operating Expenses"** means, for the applicable calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles:

1. Property taxes and assessments imposed on the Project;
2. Debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project,) on loans associated with the Project and approved by the Landlord in the Final Project Budget or otherwise;
3. Property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry, and pursuant to a management contract reasonably approved by the Landlord;
4. Premiums for property damage and liability insurance;
5. Any annual license or fees required for operation of the Project;
6. Security services;
7. Advertising and marketing costs;
8. Cash deposited into reserves for capital replacements of the Project in an amount to be approved by the Landlord as part of the Final Project Budget, as the same may increase during the Term with the approval of the Landlord; provided, however, no approval of Landlord shall be required to the extent of

## DDA EXHIBIT E

- any cash deposited into reserves for capital replacements in compliance with the requirements of Tenant's investor limited partners or lenders;
9. Cash deposited into an operating reserve in an amount to be approved by the Landlord as part of the Final Project Budget, as the same may be increase during the Term with the approval of the Landlord, and annual operating budgets, but with the operating reserve capped at six (6) months of gross rent from the Project (as such rent may vary from time to time); provided, however, no approval of Landlord shall be required to the extent of any cash deposited into an operating reserve in compliance with the requirements of Tenant's investor limited partners or lenders;
  10. Asset management fee and a partnership management fee, in the amount approved by the Landlord as part of the Final Project Budget;
  11. Utility services not paid for directly by tenants, including, without limitation, water, sewer, and trash collection;
  12. Maintenance and repair, including pest control, landscaping, grounds maintenance, painting and decorating, cleaning, common systems repair, janitorial supplies and services,
  13. Social services fees and expenses;
  14. Annual audit fees, inspection fees, or monitoring fees required in relation to any Financing Plan;
  15. Extraordinary operating costs specifically approved by the Landlord in its reasonable discretion;
  16. Payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves,
  17. Reasonable accounting fees and legal fees; and
  18. Other ordinary and reasonable operating expenses approved by the Landlord in its reasonable discretion and not listed above.

Annual Operating Expenses shall exclude the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

**"Award"** means any compensation or payment made or paid for the Total, Partial or Temporary Taking of all of any part of or interest in the Property and/or the Improvements, whether pursuant to judgment, agreement or otherwise.

## DDA EXHIBIT E

**“Capital Improvements”** means all work and improvements with respect to the Property for which costs and expenses may be capitalized in accordance with GAAP.

**“Commencement Date”** means \_\_\_\_\_, 20\_\_.

**“Compliance Period”** has the meaning set forth in Section 42(i)(l) of the Internal Revenue Code of 1986, as amended.

**“Construction”** means the improvement of the Property pursuant to the Plans.

**“Construction Loan”** refers to the loan from a lender (or consortium of lenders), the proceeds of which are used to construct the Project.

**“Director of Community Development”** means the Director of Community Development of Landlord or designee.

**“Environmental Law”** means any federal, state or local environmental, health and/or safety-related law, rule, regulation, requirement, order, ordinance, directive, guideline, permit or permit condition, currently existing and as amended, enacted, issued or adopted in the future. The term Environmental Law includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and similar state or local laws.

**“Event of Default”** has the meaning set forth in Article 21.

**“Gross Revenue”** with respect to a particular calendar year, means all revenue, income, receipts, and other consideration actually received from operation and leasing of the Project, including but not limited to:

1. all rents, fees and charges paid by tenants, payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income;
2. The proceeds of business interruption or similar insurance;
3. Any payment received in consideration for the leasing or other use of any portion of the Project;
4. Subject to the rights of Institutional Lenders, the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project (or applied toward the cost of recovering such proceeds);
5. Subject to the rights of Institutional Lenders, condemnation awards for a taking of part or all of the Project for a temporary period; and

Gross Revenue shall exclude tenants' security deposits, loan proceeds, capital contributions or other similar advances.

**“Hazardous Materials”** means flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable law, including, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 42 §§ 9601, et seq., as amended. “Hazardous Materials” expressly exclude substances typically used in the construction, development, operation or maintenance of an apartment complex provided such substances are used in accordance with all applicable laws.

**“Impositions”** means all taxes (including, without limitation, sales and use taxes); assessments (including, without limitation, all assessments for public improvements or benefits whether or not commenced or completed prior to the Commencement Date and whether or not to be completed within the Term); water, sewer or other rents, rates and charges; excises; levies; license fees; permit fees; inspection fees and other authorization fees and other charges; in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including all interests and penalties thereon), which are attributable or applicable to any portion of the Term and may be assessed, levied, confirmed or imposed on or in respect of, or be a lien upon (a) the Property or the Improvements, or any part thereof, or any estate, right or interest therein, (b) any occupancy, use or possession of or activity conducted on the Property or the Improvements, or any part thereof, or (c) this Lease. The term **“Impositions”** shall also include any and all increases in the foregoing, whether foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any increase in real property taxes resulting from a sale of the Property by Landlord.

**“Improvements”** means all buildings, structures and other improvements, including the building fixtures thereon, constructed on the Property by Tenant including all landscaping, fencing, walls, paving, curbing, drainage facilities, lighting, parking areas, roadways and similar site improvements now located or hereafter placed upon the Property.

**“Indemnitees”** means Landlord, the City of Sunnyvale, California (**“City”**) and its employees, agents, members, officials, successor and assigns.

**“Index”** means the Consumer Price Index Urban Wage Earners and Clerical Workers (San Francisco – San Jose - Oakland, CA, All Items, Base 1982 84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau discontinue the publication of the Index, or publish the same less frequently or on a different schedule, or alter the same in some other manner including, without limitation, changing the name of the Index or the geographic area covered by the Index, Landlord and Tenant shall adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

## DDA EXHIBIT E

**“Institutional Lender”** means any one or combination (including, without limitation, a consortium) of the following lending institutions: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association; an educational institution; a pension, retirement or welfare fund; a charity; an endowment fund or foundation authorized to make loans in the State of California; a company engaged in the ordinary course of business as a lender with net unencumbered assets in the amount of not less than \$50,000,000 which is duly licensed or registered with any regulatory agency having jurisdiction over its operation, if any, and is not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender where the restriction or impairment would be directly related to a proposed loan to Tenant, and which is regularly engaged in business in an office or location in the State of California; or any other entity having a net worth of \$75,000,000 or more whether or not a so-called institution; or any division, subsidiary, parent or affiliate owned or controlled by, owning or in control of or in common control or ownership with any of the foregoing entities.

**“Insurance Requirements”** means all terms of any insurance policy covering or applicable to the Property or the Improvements, or any part thereof, all requirements imposed by the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Property or the Improvements, or any part thereof, or any use or condition of the Property or the Improvements, or any part thereof.

**“Lease Year”** means the year commencing on the first day of the first full calendar month following the Commencement Date, or anniversary thereof, and ending at midnight on the last day of the month in which an anniversary of the Commencement Date occurs.

**“Legal Requirements”** means all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agents, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or from time to time hereafter may be applicable to the Property or the Improvements, or any part thereof, or to any of the adjoining sidewalks, streets or ways, or to any use or condition of the Property or the Improvements, or any part thereof.

**“Memorandum of Lease”** refers to the memorandum of lease which has been recorded as described in Section 1.4.

**“Mortgage”** has the meaning set forth in Section 18.1.1 of this Lease.

**“Mortgagee”** has the meaning set forth in Section 18.1.1 of this Lease.

## DDA EXHIBIT E

**“Net Operating Income”** means, for any calendar year, the amount, if any, by which Gross Revenue exceeds Annual Operating Expenses which Tenant paid during such period.

**“Notice of Intended Taking”** means any notice or notification on which a reasonably prudent person would rely and which said person would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, without limitation, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map of the taking which reasonably defines the extent of the taking.

**“Official Records”** means the Official Records of Santa Clara County, California.

**“Partial Taking”** means any taking of any portion of the Property and/or the Improvements that is not either a Total, Substantial or Temporary Taking.

**“Plans”** means the plans and specifications for the Construction.

**“Potential Default”** means any condition or event which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default.

**“Project”** refers to the Property and the Improvements constructed and maintained thereon.

**“Property”** has the meaning set forth in Recital B above.

**“Substantial Taking”** means the taking of so much of the Property and/or the Improvements that the portion of the Property and/or the Improvements not taken cannot be repaired or reconstructed, taking into consideration the amount of the Award available for repair or reconstruction, so as to constitute a complete, rentable structure, capable of producing a proportionately fair and reasonable net annual income after payment of all Operating Expenses, and all other charges payable under this Lease, and after performance of all covenants and conditions required by Tenant by law and under this Lease.

**“Take-Out Loan”** refers to the loan, if any, from an Institutional Lender pursuant to which said lender agrees to make a take-out loan for the purpose of paying all amounts due under the Construction Loan.

**“Taking”** means a taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The taking may occur as a result of a transfer pursuant to the recording of a final order in condemnation, a voluntary transfer or conveyance to the taking authority under threat of condemnation, or a transfer while condemnation proceedings are pending. Unless otherwise provided, the taking shall be deemed to occur as of the earlier of (a) the date actual physical possession is taken by the condemnor, or (b) the

## DDA EXHIBIT E

date on which the right to compensation and damages accrues under the law applicable to the Property and/or the Improvements. A taking as used in this Lease does not include the voluntary dedication of any portion of the Property necessary to obtain building permits or to comply with any other applicable governmental rule, regulation or statute; nor does it include the enactment of any law, ordinance or regulation which may affect the use or value of the Property but which does not involve an actual taking of any portion thereof..

“**Tax Credit Partner**” means \_\_\_\_\_, and its successors and assigns.

“**Temporary Taking**” means a taking of all or any part of the Property and/or the Improvements for a term certain which term is specified at the time of taking. Temporary Taking does not include a taking which is to last for an indefinite period or a taking which will terminate only upon the happening of a specified event unless it can be determined at the time of the taking substantially when such event will occur. If a taking for an indefinite term should take place, it shall be treated as a Total, Substantial or Partial Taking in accordance with the definitions set forth herein.

“**Term**” has the meaning set forth in Article 3 of this Lease.

“**Total Taking**” means the taking of the fee title to all of the Property.

### ARTICLE 3. TERM.

The term of this Lease (the “**Term**”) shall commence on \_\_\_\_\_, 201\_\_ (the “**Commencement Date**”), and shall continue thereafter until the earlier of: (a) the 57<sup>th</sup> - 67<sup>th</sup> anniversary of the date on which Memorandum of Lease is recorded in the Official Records subject to the True Debt Test or (b) \_\_\_\_\_, 20\_\_).

### ARTICLE 4. RENTAL.

4.1.1 **Rent.** The rent shall be One Dollar (\$1.00) per year on each anniversary of the Commencement Date.

#### 4.1.2 **Additional Rent.**

(a) In addition to the rent payable pursuant to Section 4.1.1 above, and as additional rent payable under this Lease, in the event of and upon the later to occur of (i) full payment of the City Subordinate Loan Note, or (ii) the forty-fifth (45<sup>th</sup>) anniversary of the commencement date of this Lease, the annual rent due under this Lease shall be reset based on the fair market value of the remaining leasehold interest under this Lease (taking into account the restrictions contained in this Lease and/or recorded against the Project, including any regulatory agreement recorded against the Project, hereinafter referred to as the “**Recorded Restrictions**”) as independently appraised and at an annual rental based on a percentage of such appraised value as determined by a qualified, independent appraiser (conducted by a certified appraiser reasonably acceptable to Director of Community Development and



## DDA EXHIBIT E

the Tenant), who shall take into account a return on the Partnership's equity investment in the Project of up to seven percent (7%). Such independent appraisal(s) shall determine the fair market value of the Project (but taking the Recorded Restrictions into account) at the time of such appraisal but shall also take into consideration a fair market ground lease rent over the remaining term of this Lease with an objective that the Landlord receive over such remaining term a fair market value ground lease rent (taking the Recorded Restrictions into account) under this Lease.

(b) In the event the rent under this Lease is reset pursuant to the foregoing paragraph, this adjusted annual rent for the remaining term of this Lease, as determined by the independent appraiser as described above, shall be used to adjust the rent due and required to be paid annually under this Lease to the lesser of (1) such appraised rent for the Project, or (2) fifty percent (50%) of Net Operating Income (as defined in this Lease). In any year, if the appraised value rent exceeds fifty percent (50%) of the Net Operating Income, the amount by which such appraised value rent exceeds fifty percent (50%) of Net Operating Income to be paid pursuant to this subdivision (b) in a given year shall accrue and be carried over and added to the amount of the rent to be paid in later years for the Project by the Tenant.

4.2 **Right to Audit.** Tenant shall keep full and accurate books of account, records and other pertinent data with respect to operations of the Project. Such books of account, records, and other pertinent data shall be kept for a period of three (3) years after the end of each Lease Year.

Landlord shall be entitled within one (1) year after the end of each Lease Year to inspect and examine all Tenant's books of account, records, and other pertinent data. Tenant shall cooperate fully with Landlord in making the inspection. Landlord shall also be entitled, also within one (1) year after the end of each Lease Year, to an independent audit of Tenant's books of account, records, and other pertinent data. Notwithstanding the foregoing, after the foreclosure of a Mortgage, acceptance by a Mortgagee of an assignment or deed in lieu of foreclosure, or appointment of a receiver at the request or demand of a Mortgagee, the Mortgagee shall have no obligation to produce Tenant's books and records for the periods prior to the foreclosure or appointment of the receiver.

4.3 **Utilities.** Tenant shall be responsible for the payment of all water, gas, electricity and other utilities used by Tenant on the Property.

4.4 **Taxes and Assessments.**

4.4.1 **Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Property.** In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord states that by entering into this Lease, a possessory interest subject to property taxes may be created. Tenant or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

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4.4.2 **Payment of Taxes.** Subject to any applicable exemptions, Tenant shall pay the real property and/or possessory interest taxes applicable to the Property during the term of this Lease. All such payments shall be made prior to the delinquency date of such payment. Tenant shall promptly furnish Landlord with satisfactory evidence that such taxes have been paid or that an exemption from such taxes has been obtained. If any such taxes paid by Tenant shall cover any period of time prior to or after the expiration of the Term, Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Lease shall be in effect, and Landlord shall reimburse Tenant to the extent required. If Tenant shall fail to pay any such taxes, Landlord shall have the right to pay the same, in which case Tenant shall repay such amount to Landlord within thirty (30) days after demand from Landlord together with interest at the rate set forth in Section 4.5. The parties acknowledge that Tenant intends to apply for an exemption from real property taxes under Section 214(g) of the California Revenue and Taxation Code. Tenant shall not apply for any other type of property tax exemption.

4.4.3 **Definition.** As used herein, the term "*real property tax*" shall include any form of real estate tax or assessment (including, without limitation, on possessory interests), general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income, or estate taxes) imposed on the Property or any interest (including, without limitation, possessory interests) therein by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord or Tenant in the Property or in the real property of which the Property are a part, as against Landlord's right to rent or other income therefrom, and as against Landlord's business of leasing the Property. The term "*real property tax*" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "*real property tax*," or (ii) the nature of which was hereinbefore included within the definition of "*real property tax*," or (iii) which is imposed as a result of a transfer, either partial or total, of Landlord's interest in the Property or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (iv) which is imposed by reason of this lease transaction, any modifications or changes hereto, or any transfers hereof.

4.4.4 **Personal Property.** Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Property or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

4.4.5 **Apportionment.** If any of Tenant's personal property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant not later than the later of (a) thirty (30) days after receipt of a written statement setting forth the taxes applicable to Tenant's property or (b) ten (10) days prior to the date said taxes are due and payable.

4.5 **Overdue Interest.** Any amount due to Landlord, if not paid when due and before expiration of the applicable grace period, if any, shall bear interest from the date due until paid at the lower of: (a) the reference or prime rate of Bank of America, N.T. & S.A., in effect from time to time plus three percent (3%); or (b) the highest rate of interest allowed under applicable usury law.

## **ARTICLE 5. POSSESSION OF PROPERTY.**

5.1 **Acceptance of Premises.** Tenant hereby accepts the Property.

5.2 **Ownership of Improvements.** During the term of this Lease, fee title to all Improvements, now existing or later made, on the Property are and shall be vested in Tenant. Tenant shall not, however, remove or demolish any Improvements from the Property except as permitted herein.

5.3 **Surrender of Property.**

5.3.1 **Upon Expiration.** Tenant agrees that on expiration or termination of the Term, the Improvements on the Property shall become the property of Landlord, free from any liens or claims whatsoever, without any further compensation therefor from Landlord to Tenant or any other person.

5.3.2 **Condition.** On expiration or termination of the Term, Tenant shall peaceably and quietly leave and surrender the Property and the Improvements to Landlord.

5.3.3 **Delivery of Documents.** Contemporaneous with the expiration or termination of the Term, Tenant shall immediately deliver to Landlord the following:

(a) Such documents, instruments and conveyances as Landlord may reasonably request to enable Landlord's ownership of the Property and the Improvements to be reflected of record, including, without limitation, a quitclaim deed in recordable form to the Property and the Improvements.

(b) If requested by Landlord and at Landlord's expense, title insurance or other security reasonably acceptable to Landlord insuring against all claims and liens against the Property and the Improvements other than those incurred by Landlord or accepted by Landlord in writing.

(c) All construction plans, surveys, permits and other documents relating to the Improvements as may be in the possession of Tenant at the time and from time to time thereafter.

5.4 **Abandonment.** Tenant shall not abandon or vacate the Property or the Improvements at any time during the Term. If Tenant shall abandon, vacate or otherwise surrender the Property or the Improvements, or be dispossessed (other than dispossession as the result of a Substantial Taking or a Taking) thereof by process of

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law or otherwise, the same shall constitute a default under this Lease on the part of Tenant and, in addition to any other remedy available to Landlord, any of Tenant's property left in, upon or about the Property or the Improvements (except for underground storage tanks) shall, at Landlord's option, be deemed to be abandoned and shall become the property of Landlord. The appointment of a receiver pursuant to a Mortgagee's exercise of its rights under a Mortgage, or the foreclosure of a Mortgage, shall not be a default under this Section.

**ARTICLE 6. REPRESENTATIONS AND WARRANTIES.**

6.1 **Landlord's Representations.** Landlord represents and warrants to Tenant that it owns the Property in fee simple and has the power and authority to enter into this Lease and perform all obligations and agreements incidental or pertinent to the Lease. Landlord makes no representation or warranty with respect to the condition of the Property or its fitness or availability for any particular use, and Landlord shall not be liable for any latent or patent defect therein.

6.2 **Tenant's Representations.** Tenant represents and warrants to Landlord that it has examined the Property and acknowledges that it hereby accepts possession of the Property in its "AS IS" condition, with all faults and defects, whether known or unknown; that the Tenant is not relying on any representations or warranties of any kind whatsoever, express or implied, from the Landlord as to any matters concerning the Property, including without limitation: (1) the quality, nature, adequacy and physical condition of the Property (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities serving the Property; (4) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (5) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property; (6) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property unless such presence or absence of Hazardous Materials is actually known to the Landlord as of the date hereof; and (8) the condition of title to the Property.

6.3 **Release of the Landlord.** The Tenant, on behalf of itself and anyone claiming by, through or under the Tenant hereby waives its right to recover from and fully and irrevocably releases the Landlord, and its council members, board members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Tenant may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition (including any construction defects, errors, omissions or other conditions,

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latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (ii) any presence of Hazardous Materials; and (iii) any information furnished by the Released Parties under or in connection with this Lease.

Scope of Release. The release set forth in this Section includes claims of which the Tenant is presently unaware or which the Tenant does not presently suspect to exist which, if known by the Tenant, would materially affect the Tenant's release of the Released Parties. The Tenant specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Tenant agrees, represents and warrants that the Tenant realizes and acknowledges that factual matters now unknown to the Tenant may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Tenant further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Tenant nevertheless hereby intends to release, discharge and acquit the Landlord from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Tenant, on behalf of itself and anyone claiming by, through or under the Tenant, hereby assumes the above-mentioned risks and hereby expressly waives any right the Tenant and anyone claiming by, through or under the Tenant, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Tenant's Initials: \_\_\_\_\_

Notwithstanding the foregoing, the Tenant's release of the Landlord shall not apply to, nor shall the Landlord be released from, the Landlord's actual fraud or misrepresentation.

## **ARTICLE 7. DEVELOPMENT OF THE PROPERTY.**

7.1 **Construction.** Within thirty (30) days after the Construction Loan Closing, or such longer period as the City Manager may approve, Tenant shall commence the Construction. Tenant shall cause the Improvements to be constructed substantially in accordance with the Plans and the terms and conditions of the land use permits and approvals and building permits, including any variances granted. The Tenant shall cause all Construction to be performed in compliance with: (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, including the prevailing wage provisions required by law; and (2) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Each element of the construction work

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shall proceed only after procurement of each permit, license, or other authorization that may be required for such element by any governmental agency having jurisdiction, and the Tenant shall be responsible for the procurement and maintenance thereof, as may be required of the Tenant and all entities engaged in work on the Improvements.

7.2 **Construction Cost.** Tenant shall bear the cost of the Construction, including all fees and mitigation measures.

7.3 **Changes; Landlord Consent.** Except as otherwise provided in this Lease, Tenant shall not make any changes in the Plans without the Director of Community Development's prior written consent if such change would result in an increase in construction costs in excess of Five Hundred Thousand Dollars (\$500,000.00) for any single change or in excess of One Million Dollars (\$1,000,000.00) for all such changes.

7.3.1 **Submission Requirement; Consent Process.** Tenant shall submit any proposed changes in the Plans to the Director of Community Development prior to the commencement of construction relating to such proposed change. Requests for any change which requires consent shall be accompanied by working drawings and a written description of the proposed change, submitted on a change order form reasonably acceptable to the Director of Community Development, signed by Tenant and, if required by the Director of Community Development, also by the Project architect. If a proposed change is approved, then Tenant shall be notified in writing within ten (10) days after submission. If the Director of Community Development fails to disapprove a proposed change within said ten (10)-day period, and state the reason(s) for such disapproval with reasonable particularity, then the proposed change shall be deemed approved. The Director of Community Development's review and approval of any such change shall not constitute any approvals required by the City in its regulatory capacity to such change.

7.4 **Landlord's Review.** Landlord does not have, and by this Lease expressly disclaims, the right to or duty for any review of the Plans for the purpose of determining compliance with building codes, governmental approvals applicable to the Property safety features or standards or for the purpose of determining or approving engineering or structural design, sufficiency or integrity. Landlord's approval of a direction or request to change the plans, specifications or drawings submitted by Tenant is not and shall not be a review or approval of the quality, adequacy or suitability of such plans, specifications or drawings, nor of the labor, materials, services or equipment to be furnished or supplied in connection therewith. Any change or alteration in any construction document pursuant to a direction or request in writing by Landlord shall similarly be subject to the provisions of this Article unless in response to such direction or request Tenant or its representative shall notify Landlord in writing that the direction or request, if executed as directed or requested, shall constitute a danger or hazard to life, safety or property or shall create a dangerous condition that would or might constitute such a danger or hazard and Landlord nevertheless requires such change or alteration. Landlord does not have and expressly disclaims any right of supervision or control over the architects, designers, engineers or other draft persons and

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professionals responsible for the drafting and formulation of the Plans, or any right of supervision or control of contractors, builders, trades and other persons engaged in constructing and fabricating the improvements pursuant to the Plans. Landlord further acknowledges that it shall not have any right to disapprove any plan, specification or drawing which logically evolves from any previously approved plan, specification or drawing or to request or require a change in any previously approved item. Landlord's rights and benefits under this Section 7.4 shall inure to Landlord in its capacity as landlord under this Lease, and not in any other capacity it may have.

7.5 **Soil Conditions**. Landlord makes no covenants or warranties respecting the condition of the soil or subsoil or any other condition of the Property; provided, however, that the foregoing shall not constitute a release of Landlord under any statute or common law theory.

7.6 **Diligent Prosecution to Completion**. Once the work is begun, Tenant shall, with reasonable diligence, prosecute the Construction to completion. The Construction shall be completed and ready for use within twenty-two (22) months after the Construction Loan Closing. Additionally, upon the written request of Tenant, the City Manager may, at the City Manager's sole and absolute discretion, grant one or more extensions of the date by which the Construction must be completed of, in the aggregate, not more than one hundred and eighty (180) days. All work shall be performed in a good and workmanlike manner, shall substantially comply with the Plans, and shall comply with all applicable governmental permits, laws, ordinances, and regulations.

7.7 **Right of Access**. During normal construction hours and following two (2) days prior written notice to Tenant, representatives of Landlord shall have the reasonable right of access to the Property without charge or fee for the purpose of inspecting the work of the Construction; provided, however, that such representatives shall present and identify themselves at Tenant's construction office, be accompanied by a representative of Tenant while on the Property and obey Tenant's, or its contractor's, safety rules and regulations. Landlord shall deliver written notice of the identity of its representatives to Tenant before such representatives enter the Property. Landlord hereby indemnifies, defends, protects and holds Tenant, and its partners, contractors, subcontractors, agents, tenants, representatives and employees, and the Property and the Project, harmless from and against any loss, cost, damage or liability, including, without limitation, attorneys' fees, which directly and solely results from the exercise by Landlord, or any party acting under Landlord's authority, of the rights granted by this Section.

7.8 **Governmental Approvals**. If requested by Landlord in writing, Tenant covenants and agrees to deliver to Landlord conformed copies (and certified copies of all recorded instruments) of all governmental approvals and permits obtained by Tenant for the construction, alteration or reconstruction of any Improvements upon the Property in accordance with the Plans. In no event shall Tenant commence construction of any Improvements pursuant to the provisions of this Article 7 until such time as Tenant shall

have obtained all required governmental approvals and permits to so construct such Improvements.

7.9 **Landlord's Right to Discharge Lien**. If any claim of lien is filed against the Property, or a stop notice affecting the City Subordinate Loan is served on the Landlord or any other lender or other third party in connection with the Project, then the Tenant shall, within thirty (30) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the Landlord a surety bond from a surety acceptable to the Landlord in sufficient form and amount, or provide the Landlord with other assurance satisfactory to the Landlord that the claim of lien or stop notice will be paid or discharged.

If the Tenant fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, the Landlord may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Tenant's expense. Alternatively, the Landlord may require the Tenant to immediately deposit with the Landlord the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The Landlord may use such deposit to satisfy any claim or lien that is adversely determined against the Tenant.

7.10 **Force Majeure**. All obligations of Tenant to promptly commence and thereafter diligently prosecute to completion the Construction shall be extended by such number of days as Tenant shall be delayed by reason of events of force majeure pursuant to Article 24.

7.11 **Notice of Non Responsibility**. After the recordation of the Certificate of Completion for the Improvements in the Official Records, Tenant shall provide Landlord with prior written notice of not less than fifteen (15) days before commencing construction of any structural alteration of the Improvements, or any non-structural alteration which will cost more than Fifty Thousand Dollars (\$50,000.00), and shall permit Landlord to record and post appropriate notices of non-responsibility on the Property. The foregoing Fifty Thousand Dollar (\$50,000.00) limitation shall be increased each calendar year by the corresponding percentage increase in the Index.

7.12 **Notice of Completion**. On completion of construction of the Improvements, Tenant shall file or cause to be filed a notice of completion. Tenant hereby appoints Landlord as Tenant's attorney-in-fact to file the notice of completion on Tenant's failure to do so after the work of improvement has been substantially completed.

7.13 **Subsequent Alterations**. Following the Construction in substantial accordance with the Plans, Tenant may from time to time, at its sole expense, make improvements and other alterations to the Property which Tenant reasonably determines to be beneficial. Tenant shall not make any alteration or improvement to the Property the cost of which exceeds One Hundred Thousand Dollars (\$100,000.00) without Landlord's prior written consent, which consent shall not be unreasonably



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withheld, conditioned or delayed. The foregoing dollar amount limitations shall be increased each calendar year by the corresponding increase in the Index. Tenant shall timely pay any obligation incurred by Tenant with respect to any such alterations or improvements that could become a lien against the Property and shall defend, indemnify and hold Landlord harmless in connection therewith. Tenant shall be responsible for obtaining any necessary governmental approvals for such improvements or alterations.

7.14 The Tenant shall pay and will cause the contractor and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). The Tenant shall, and shall cause the its contractor and subcontractors to, comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR. The Tenant shall, and shall cause its contractor and subcontractors to, keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq. Copies of the currently applicable per diem prevailing wages are available from DIR. During the construction of the Project, the Tenant shall or shall cause its contractor to post at the Property the applicable prevailing rates of per diem wages. The Tenant shall cause its respective contractors and subcontractors to be registered as set forth in Labor Code Section 1725.5. The Partnership shall cause its respective contractors and subcontractors to do all the following: (1) all calls for bids, bidding materials and the construction contract documents for the Project shall specify that: (1) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Project unless registered with the DIR pursuant to Labor Code Section 1725.5; and (2) the Project is subject to compliance monitoring and enforcement by the DIR; (3) the Tenant is required to provide the City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>); (4) the Tenant shall cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; and (5) the Partnership shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

The Tenant agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to the City), the City Indemnitees against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Tenant, its contractors and subcontractors), if required by applicable law, to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq. to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Section 1720 et seq., 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code set

forth above and the implementing regulations of the DIR in connection with the construction of the Project. The indemnification provided hereunder will survive the expiration of the term or termination of this Lease.

## **ARTICLE 8. USE OF THE PROPERTY, HAZARDOUS MATERIALS, AND NON-DISCRIMINATION.**

8.1 **Reporting.** Tenant shall permit the representatives of Landlord from time to time, upon three business days prior written notice, to inspect and copy its books and records. Tenant shall maintain a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements which shall be in conformity with GAAP basis of accounting. Tenant shall furnish or cause to be furnished to Landlord the following:

(a) **Annual Statements.** As soon as available, and in any event not later than one hundred eighty (180) days after the close of each fiscal year of Tenant, financial statements of Tenant, including a profit and loss statement, reconciliation of capital accounts and a consolidated statement of changes in financial position of Tenant as at the close of and for such fiscal year, all in reasonable detail, certified by an officer or partner of Tenant;

(b) **Pro Forma Budget.** As soon as available and in any event not later than December 1 of each calendar year beginning with the year in which Construction is completed, Tenant shall provide Landlord, for the Director of Community Development's approval, with a projection of estimated Operating Expenses for the immediately succeeding calendar year (the "**Pro Forma Budget**"). Tenant shall also submit to Landlord on request additional detail, information and assumptions used in the preparation of the Pro Forma Budget.

Within thirty (30) days following its receipt of the Pro Forma Budget, Landlord shall deliver to Tenant its written approval or disapproval thereto, which approval shall not be unreasonably withheld, conditioned or delayed. If Landlord disapproves the Pro Forma Budget, it shall set forth its reasons with specificity. If Landlord fails to indicate either its approval or disapproval of the Pro Forma Budget within such period, then Landlord shall be deemed to have approved the Pro Forma Budget as submitted by Tenant.

Once the Pro Forma Budget is approved or deemed approved by Landlord, such approved Pro Forma Budget shall become the "**Approved Budget**" for the entire applicable calendar year. Tenant shall use commercially reasonable efforts to operate the Property during such calendar year within the Approved Budget; provided, however, that the

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Tenant shall not be required to obtain the approval of Landlord for any deviation from the Approved Budget so long as the total Operating Expenses and expenditures for Capital Improvements paid or incurred during such calendar year do not exceed the originally budgeted amount thereof in the Approved Budget by more than twenty percent (20%) in the aggregate. To the extent required hereunder, any request by Tenant to deviate from the Approved Budget shall be submitted to Landlord in writing. Landlord shall reasonably respond to any such request within five business (5) days of the receipt of same and if Landlord fails to do so, such request shall be deemed to be approved;

(c) **Tax Returns.** As soon as available, and in any event not later than thirty (30) days following the time of filing with the Internal Revenue Service (as the same may be extended), the federal tax returns of Tenant;

(d) **Audit Reports.** Following receipt thereof, copies of all reports submitted to Tenant by independent certified public accountants in connection with each annual, interim or special audit of the financial statements of Tenant made by such accountants;

(e) **Certificate of Continuing Program Compliance.** Tenant shall submit to Landlord on an annual basis the Certificate of Continuing Program Compliance.

(f) **Other Information.** Such other documents and information relating to the affairs of Tenant and the Property as Landlord reasonably may request from time to time which Tenant can provide for a reasonable cost.

8.2 **Onsite Manager.** Tenant, through an onsite professional property manager or property management company, shall manage the Project or cause it to be managed. Any manager or management company retained to act as agent for Tenant in meeting the obligation of providing an onsite manager shall be subject to prior written approval of the Director of Community Development, which approval shall not be unreasonably withheld or delayed. Related Management Company, L.P. ("RMC") is hereby approved by Landlord as the initial property manager. In exercising approval rights hereunder, the Director of Community Development may require proof of ability and qualifications of the manager and/or management company based upon (i) prior experience, (ii) assets, and (iii) other factors determined by the Director of Community Development as necessary. Furthermore, upon sixty (60) days prior written demand from Landlord with cause, Tenant shall remove and replace a property manager and/or property management company. In any agreement with a property manager or property management company ("Management Agreement"), Tenant shall expressly reserve the right to terminate such agreement upon written demand of Landlord with cause. That notwithstanding, Landlord agrees that RMC shall be entitled to a thirty (30)-day notice of default and a reasonable opportunity to cure before any such termination.

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8.3 **No Use of Hazardous Materials on the Property.** Tenant covenants and agrees that it shall not, and that it shall not permit any subtenant to, treat, use, store, dispose, release, handle or otherwise manage Hazardous Materials on the Property from and after the date hereof except in connection with any construction, operation, maintenance or repair of the Improvements or in the ordinary course of its business, and that such conduct shall be done in compliance with all applicable federal, state and local laws, including all Environmental Laws. Tenant's violation of the foregoing prohibition shall constitute a breach hereunder and Tenant shall indemnify, hold harmless and defend the Landlord for such violation as provided below.

8.4 **Notice and Remediation by Tenant.** Tenant shall promptly give the Landlord written notice of any significant release of any Hazardous Materials, and/or any notices, demands, claims or orders received by Tenant from any governmental agency pertaining to Hazardous Materials which may affect the Property.

8.5 **Environmental Indemnity.** Tenant agrees to indemnify, protect, hold harmless, and defend (with counsel reasonably satisfactory to Landlord) the Indemnitees from and against any and all losses, costs, claims, expenses, damages (including, without limitation, foreseeable or unforeseeable consequential damages and attorneys' fees), and liabilities directly or indirectly arising out of or in any way connected with (a) Tenant's breach or violation of any covenant, prohibition or warranty in this Lease concerning Hazardous Materials, (b) the activities, acts or omissions of Tenant, its employees, contractors or agents on or affecting the Property from and after the Commencement Date, including but not limited to the release of any Hazardous Materials or other kinds of contamination or pollutants of any kind into the air, soil, groundwater or surface water on, in, under or from the Property, (c) any Hazardous Materials claim related to the Property arising from events occurring after the Commencement Date, and (d) the presence, in, on or under the Project of any Hazardous Materials to the extent such claims arise after the Commencement Date. This indemnification supplements and in no way limits the scope of the indemnification set forth in Article 13.

8.6 **Termination; Subtenants.** No action by any subtenant in violation of its sublease shall constitute a cause to terminate this Lease provided that Tenant diligently pursues its available remedies against such subtenant.

8.7 **Nondiscrimination.** 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 Property nor shall the Tenant itself, or any person claiming under or through Tenant, 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 Property.

8.8 **Form of Nondiscrimination and Nonsegregation Clauses.** Tenant covenants and agrees for itself, its successors, its assigns and every successor in

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interest to the Property or any part thereof, that it shall refrain from restricting the lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Property (or any part thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All such leases, or contracts pertaining thereto shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

**8.8.1 In leases:** “The lessee herein covenants by and for itself, its 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 sex, marital status, race, color, religion, creed, national origin, or ancestry, in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, or occupancy of tenants, lessees, sublessees, tenants, or vendees in the land herein leased.”

**8.8.2 In contracts:** “There shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, rental, 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.”

**8.9 Social Services.** From not later than six (6) months after the date of issuance of a permanent certificate of occupancy for the Project until expiration of the Term, Tenant shall provide services to the residents of the Project in accordance with the plan therefor attached hereto as Exhibit B, as such plan may be amended from time to time with the consent of the Director of Community Development.

**8.10 Effect and Duration of Covenants.** Subject to Section 8.21 below, the covenants established in this Article shall, without regard to technical classification and designation, be binding on Tenant and any successor in interest to the Property, or Tenant’s leasehold interest therein, or any part thereof, for the benefit and in favor of the Landlord, its successors and assigns, and the City until the expiration of the Term, except to the extent said covenant expressly provides that it shall survive the expiration of the Term.

## **ARTICLE 9. INSURANCE.**

**9.1 Landlord Not Liable.** Except as the sole result of any grossly negligent or intentional acts or omissions by Landlord or its representatives, employees or agents, or as otherwise expressly set forth herein, Landlord shall not be liable for injury to Tenant’s business or any loss of income therefrom or for any damage or liability of any

kind or for any injury to or death of persons or damage to property of Tenant, or to Tenant's agents, employees, servants, contractors, subtenants, licensees, concessionaires, customers or business invitees or any other person which occurs on the Property during the Term.

9.2 **Indemnification.** Except with respect to any grossly negligent or intentional acts or omissions by Landlord or its representatives, employees or agents, Tenant shall indemnify, defend and hold the Indemnitees harmless from and against all liability, loss, damage, cost or expense (including attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage to any person or to the property of any person caused by Tenant's performance of its obligations under this Lease or any errors or omissions of Tenant, whether such performance, errors or omissions of Tenant be made by Tenant, its contractors or subcontractors, or anyone directly or indirectly employed by Tenant, and whether such damage shall accrue or be discovered before or after the termination of this Lease. This indemnification provision supplements and in no way limits the scope of the indemnifications in Article 13. The indemnity obligation of Tenant under this Article shall survive the expiration or termination, for any reason, of this Lease. This Section notwithstanding, indemnification with respect to Hazardous Materials shall be governed by Section 8.5.

9.3 **Insurance.** From and after the Commencement Date until the termination of this Lease, Tenant shall take out and maintain the following types of insurance in the forms and amounts (as may be increased each calendar year by the corresponding increase in the Index) set forth below, at Tenant's sole expense. Notwithstanding the amounts of insurance set forth below, the Director of Community Development shall have the right, but not the obligation, to reduce the amounts required from time to time.

9.3.1 Comprehensive General Liability in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit for each occurrence or Four Million Dollars (\$4,000,000.00) general aggregate for bodily injury, personal injury and property damage including contractual liability. The limits of this insurance shall be increased to an amount not less than Five Million Dollars (\$5,000,000.00) combined single limit upon the recordation of the Certificate of Completion for any of the Improvements in the Official Records. The Indemnitees shall be covered as additional insureds with respect to liability arising out of activities by or on behalf of Tenant or in connection with the use or occupancy of the Property. Coverage shall be in a form acceptable to the City Risk Manager and shall be primary and non-contributing with any insurance or self-insurance maintained by City.

9.3.2 Automobile Liability 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, non-owned and hired vehicles.

9.3.3 Workers' Compensation as required by the Labor Code of the State of California and Employers' Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00).

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9.3.4 Environmental Impairment Policy for premises remediation related to the presence, in, on or under the Project of any Hazardous Materials prior to the Commencement Date, subject to City Manager review and approval.

9.3.5 **“All Risk”** property including builder’s risk protection during the course of construction, covering the full replacement value of the Improvements constructed on or about the Property by Tenant. Said insurance shall include debris removal, and, if typically carried upon similar affordable housing projects in Santa Clara County, California, coverage for earthquake and flood if this protection is required by the Senior Lender. Landlord shall be named as insured under a standard loss payable endorsement.

9.4 **Other Insurance**. Tenant shall also obtain and maintain such other insurance in forms and amounts reasonably required from time to time by Landlord or the City Risk Manager for protection against the same or other insurable hazards which are then typically insured against by similar properties in Santa Clara County, California, provided that such coverage is available at commercially reasonable rates.

9.5 **Contractors**. All contractors employed by Tenant with contracts of Fifty Thousand Dollars (\$50,000.00) or more shall be required to furnish evidence of Comprehensive General Liability insurance subject to all the requirements stated herein with limits of not less than One Million Dollars (\$1,000,000.00) combined single limit each occurrence. The Indemnitees shall have the right to receive evidence of compliance with the foregoing by contractors at any time upon written request therefor.

9.6 **Acceptable Terms of Coverage**. Acceptable insurance coverage shall be placed with carriers admitted to write insurance in California, or carriers with a rating of or equivalent to A-:VIII by A.M. Best & Company. Any deviation from this rule shall require specific approval in writing from the City’s Risk Manager. Any deductibles in excess of Twenty-Five Thousand Dollars (\$25,000.00) per occurrence or self-insured retentions must be declared to and approved by the City Risk Manager. At the option of the City Risk Manager, Tenant may be required to reduce or eliminate such deductibles or self-insured retentions or to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense costs. In the event such insurance provides for deductibles or self-insured retention, Tenant agrees that it will fully protect the Indemnitees in the same manner as those interests would have been protected had the policy or policies not contained a deductible or retention. Coverage under each policy shall not be suspended, avoided or canceled by either party except after thirty (30) days’ prior written notice to Landlord. Tenant shall furnish the Indemnitees with certificates of insurance and with original endorsements effecting coverage as required under this Article. The certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The Indemnitees reserve the right to require complete certified copies of all insurance policies not previously provided at any time.

9.7 **Blanket Coverage**. Notwithstanding anything to the contrary set forth in this Article 9, Tenant’s obligations to carry the insurance provided for herein may be

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brought within the coverage of a so called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, (i) that the Indemnitees and other parties in interest to it shall be named as additional insureds as their interests may appear, and (ii) that the coverage afforded the Indemnitees will not be reduced or diminished by reason of the use of such blanket policy of insurance, and (iii) that the requirements set forth in this Article 9, are otherwise satisfied.

9.8 **Waiver of Subrogation**. Each policy of insurance procured pursuant to this Article 9 shall contain, if obtainable upon commercially reasonable terms, either (i) a waiver by the insurer of the right of subrogation against either party hereto for negligence of such party, or (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy. Each of the parties hereto waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of such other party, for loss or damage to such waiving party or its property or the property of others under its control, arising from any cause insured against under the form of insurance policies required to be carried pursuant to this Article 9 of this Lease or under any other policy of insurance carried by such waiving party.

**ARTICLE 10. MAINTENANCE; REPAIRS; ALTERATIONS; RECONSTRUCTION.**

10.1 **General Maintenance**. Throughout the Term, Tenant shall, at Tenant's sole cost and expense, maintain the Property and the Improvements in good condition and repair, ordinary wear and tear excepted, and in accordance with all applicable federal, state and local laws, ordinances and regulations of (a) governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, (b) insurance underwriting boards or insurance inspection bureaus having or claiming jurisdiction, and (c) all insurance companies insuring all or any part of the Property or the Improvements, or both.

The Tenant acknowledges the great emphasis the Landlord places on quality maintenance to provide quality low-income housing for area residents and to ensure that City-assisted affordable housing projects are not allowed to deteriorate due to deficient maintenance. In addition, the Tenant shall keep the Project free from all graffiti, and any accumulation of shopping carts, debris or waste material. The Tenant shall promptly make all repairs and replacements necessary to keep the Project in good and sanitary condition and repair (and as to landscaping, in a healthy condition) consistent with quality affordable housing developments owned or operated by Related or Related Affiliates and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials.

In the event that the Tenant breaches any of the covenants contained in this Section and such default continues for a period of seven (7) days after written notice from the Landlord with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the Landlord with respect to landscaping and building improvements, then the Landlord, in addition to whatever other remedy it may



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have at law or in equity, shall have the right to enter upon the Project and perform or cause to be performed all such acts and work necessary to cure the default, or if a period longer than seven (7) and thirty (30) days is reasonably necessary to correct the deficiency, respectively, then the Tenant shall begin to correct the deficiency within seven (7) and thirty (30) days, respectively, and correct the deficiency as soon as reasonably possible. Pursuant to such right of entry, the Landlord shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the Project and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the Landlord and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by the Tenant to the Landlord upon demand.

The conditions and obligations set forth in this Section shall run with the Property and shall apply for the entire Term of this Lease.

10.2 **Program Maintenance**. In addition to the routine maintenance and repair required pursuant to Section 10.1, Tenant shall perform the following programmed maintenance on the Improvements:

- (a) Interior painting and window covering replacement at least every five (5) years;
- (b) Exterior painting at least every ten (10) years;
- (c) Repair and resurfacing of parking areas and walkways at least every five (5) years; and
- (d) Replacement of all deteriorated or worn landscaping and play equipment at least every five (5) years.

Upon the request of Tenant, the Director of Community Development may grant a waiver or deferral of any program maintenance requirement. Tenant shall keep such records of maintenance and repair as are necessary to prove performance of the program maintenance requirements.

## **ARTICLE 11. OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS.**

### **11.1 Ownership During Term.**

11.1.1 **Improvements**. All Improvements on the Property as permitted or required by this Lease shall, during the Term, be and remain the property of Tenant, and Landlord shall not have title thereto. Tenant shall not, however, demolish or remove any Improvements from the Property except as permitted herein.

11.1.2 **Personal Property**. All personal property, furnishings, fixtures and equipment, including, without limitation, which are not so affixed to the Property or the

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buildings thereon as to require substantial damage to the buildings upon removal thereof shall constitute personal property including, but not limited to: (a) functional items related to the everyday operations of the Property; (b) personal property furnishings, fixtures and equipment of the nature or type deemed by law as permanently resting upon or attached to the buildings or land by any means, including, without limitation, cement, plaster, nails, bolts or screws, or essential to the ordinary and convenient use of the Property and the Improvements. At any time during the Term and at termination thereof, Tenant shall have the right to remove any and all such personal property, furnishings, fixtures and equipment; provided, that Tenant repairs any damage to the Property or the Improvements caused by such removal.

**11.1.3 Basic Building Systems.** For purposes of this Lease, the personal property, furnishings, fixtures and equipment described in this Section 11.1 shall not include those major building components or fixtures necessary for operation of the basic building systems such as, but not limited to, the elevators, plumbing, sanitary fixtures, heating and central air-cooling system.

**11.2 Ownership at Expiration or Termination.**

**11.2.1 Property of Landlord.** At the expiration or earlier termination of the Term, except as provided in Section 11.2.2, all Improvements which constitute or are a part of the Property shall become (without the payment of compensation to Tenant or others) the property of Landlord free and clear of all claims and encumbrances on such Improvements by Tenant, and anyone claiming under or through Tenant, except for such title exceptions permitted or required during the Term. Tenant shall then quitclaim to Landlord any and all rights, interests and claims to the Improvements. Tenant agrees to and shall defend, indemnify and hold Landlord harmless from and against all liability and loss which may arise from the assertion of any such claims and any encumbrances on such Improvements (except claims arising due to Landlord's actions) and except for such title exceptions permitted or required during the Term.

**11.2.2 Removal by Tenant.** Tenant shall not be required or permitted to remove the Improvements, or any of them, at the expiration or sooner termination of the Term; provided, however, that, within thirty (30) days following the expiration or sooner termination of the Term, Tenant may remove all personal property, furniture, and equipment.

**11.2.3 Unremoved Property.** Any personal property, furnishings or equipment not removed by Tenant within thirty (30) days after the expiration or sooner termination of the Term, shall, without compensation to Tenant, become Landlord's property, free and clear of all claims to or against them by Tenant or any third person, firm or entity arising by, through or under Tenant.

**11.2.4 Maintenance and Repair of Improvements.** Subject to the provisions of this Lease concerning condemnation, alterations and damage and destruction, Tenant agrees to assume full responsibility for the operation and maintenance of the Property and the Improvements and all fixtures and furnishings

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thereon or therein throughout the Term hereof without expense to Landlord, and to perform all repairs and replacements necessary to maintain and preserve the Property, the Improvements, fixtures and furnishings in a decent, safe and sanitary condition consistent with good practices and in compliance with all applicable laws. Tenant agrees that Landlord shall not be required to perform any maintenance, repairs or services, or to assume any expense not specifically assumed herein in connection with the Property and the Improvements thereon unless specifically required under the terms of this Lease.

Except as otherwise provided in this Section 11.2 and in Section 11.4, the condition of the Improvements required to be maintained hereunder upon completion of the work of maintenance or repair shall be equal in value, quality and use to the condition of such Improvements before the event giving rise to the work.

11.3 **Waste.** Subject to the alteration rights of Tenant and damage and destruction or condemnation of the Property or any part thereof, Tenant shall not commit or suffer to be committed any waste of the Property or the Improvements, or any part thereof.

Tenant agrees to keep the Property and the Improvements clean and clear of refuse and obstructions, and to dispose properly of all garbage, trash and rubbish.

11.4 **Alteration of Improvements.** Except as provided in Section 7.1, Tenant shall not make or permit to be made any material, exterior alteration of, addition to or change in, the Improvements which would materially affect the exterior elevations (including materials selection and color) or the size, bulk and scale of the Property, other than routine or necessary maintenance and repairs, nor demolish all or any part of the Improvements, without the prior written consent of Landlord. Nothing herein shall prohibit interior alterations or decorations, or the removal and replacement of interior improvements consistent with the specified use of the Property. In requesting consent for such exterior improvements as required by the foregoing, Tenant shall submit to Landlord detailed plans and specifications of the proposed work and an explanation of the need and reasons thereof. Tenant may make such other improvements, alterations, additions or changes to the Improvements which do not materially affect the exterior elevations (including materials selection and color) or the size, bulk and scale thereof without Landlord's prior written consent.

Notwithstanding the prohibition in this Section 11.4, Tenant may make such changes, repairs, alterations, improvements, renewals or replacements to the exterior elevations, materials, size, bulk or scale of the Improvements as are required (a) by reason of any law, ordinance, regulation or order of a competent government authority, (b) for the continued safe and orderly operation of the Property, or (c) to continue to receive the Low Income Housing Tax Credit.

**ARTICLE 12. SIGNS.**

Tenant shall not place or suffer to be placed on the Property or upon the roof or any exterior door or wall or on the exterior or interior of any window of the Improvements, any sign, awning, canopy, marquee, advertising matter, decoration, lettering or other thing of any kind (exclusive of the signs, awnings and canopies, if any, which may be provided for in the Plans) without the written consent of the Director of Community Development first had and obtained. The Director of Community Development's approval pursuant to this Lease shall not constitute any approval required by the City pursuant to its zoning and building codes for any such sign.

**ARTICLE 13. INDEMNIFICATION.**

Tenant will protect, indemnify and save the Indemnitees harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Landlord, or the Property or the Improvements during the Term, unless caused solely by the willful act or gross negligence of Landlord, by reason of (a) any accident or injury to or death of persons or loss of or damage to property occurring on or about the Property or the Improvements, (b) any failure on the part of Tenant to perform or comply with any of the terms of this Lease, or (c) any negligence or tortuous act on the part of Tenant or any of its agents, employees, contractors, subtenants, licensees or invitees. In the event that any action, suit or proceeding is brought against the Indemnitees by reason of any such occurrence, Tenant, upon Landlord's request, will, at Tenant's expense, defend such action, suit or proceeding with counsel approved by Landlord. This Section notwithstanding, indemnification with respect to Hazardous Materials shall be governed by Section 8.14.

**ARTICLE 14. DAMAGE OR DESTRUCTION OF PROPERTY OR IMPROVEMENTS.****14.1 Tenant's Repair Obligation.**

14.1.1 In case of damage to or destruction of the Property or the Improvements, or any part thereof, by fire or other cause at any time during the Term of this Lease, Tenant, if and to the extent insurance proceeds are available, shall restore the same as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such restoration shall be commenced with due diligence and in good faith, and prosecuted with due diligence and in good faith, unavoidable delays excepted.

14.1.2 In case of damage to or destruction of the Improvements by fire or other cause resulting in a loss exceeding in the aggregate One Hundred Thousand Dollars (\$100,000), Tenant shall promptly give written notice thereof to Landlord.

## 14.2 Tenant's Restoration of Premises.

14.2.1 If, during the Term, the Improvements are damaged or destroyed, and the total amount of loss does not exceed thirty-three percent (33%) of the replacement value of the Improvements, Tenant shall make the loss adjustment with the insurance company insuring the loss, with the approval of Landlord, which approval shall not be unreasonably withheld or delayed. The proceeds shall be paid directly to a Mortgagee, if any, and if there is not a Mortgagee, to Landlord and Tenant for the sole purpose of making the restoration of the Improvements in accordance with this Article 14.

14.2.2 If, during the Term, the Improvements are damaged or destroyed, and the total amount of loss exceeds thirty-three percent (33%) of the replacement value of the Improvements, Tenant shall make the loss adjustment with the insurance company insuring the loss, with the approval of Landlord, which approval shall not be unreasonably withheld or delayed, and the insurance company shall immediately pay the proceeds to a bank or trust company designated by Landlord and approved by Tenant ("Insurance Trustee"), which approval shall not be unreasonably withheld or delayed. Any leasehold mortgagee shall be an acceptable Insurance Trustee. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

(a) The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Tenant and approved by Landlord as construction progresses, for payment of the cost of restoration. A ten percent (10%) retention fund shall be established that will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the Property and the Improvements are free of all mechanics' liens and lienable claims;

(b) Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant and approved by Landlord (which approval shall not be unreasonably withheld or delayed) showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the Insurance Trustee out of the trust fund;

(c) If, after the work of restoration has commenced, the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration, Tenant shall deposit the amount of the deficiency with the Insurance Trustee within ten (10) days after receipt of request for payment

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of such amount from the Insurance Trustee, which request shall be made by the Insurance Trustee promptly after it is determined there will be a deficiency;

(d) If the Insurance Trustee has received notice from Landlord that the Tenant is in default under this Lease or under the City Subordinate Loan Note, then, subject to the lien of a Mortgagee's Mortgage and the Mortgagee's prior written consent, the Insurance Trustee shall pay to Landlord an amount sufficient to cure such default as specified in Landlord's notice to the Insurance Trustee;

(e) Any amounts remaining after making the payments hereinabove referred to in clauses (a), (b) and (d), and after paying the reasonable costs and expenses of the Insurance Trustee, shall be paid to any leasehold Mortgagee to the extent (a) required by any Mortgage and (b) such leasehold Mortgagee makes written demand therefor to the Insurance Trustee;

(f) Any undisbursed funds remaining after compliance with all of the provisions of this Section 14.2 shall, if and to the extent required by any Mortgage, be delivered to the Mortgagee, and if there is no leasehold Mortgagee to the City if the City Subordinated Loan is unpaid as payment of amounts other thereon and then to Tenant; and

(g) All actual costs and charges of the Insurance Trustee shall be paid by Tenant. If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, Landlord shall substitute a new Insurance Trustee in the manner described in this Section.

14.2.3 Both parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this Section 14.2.

### 14.3 Procedure for Restoring Improvements.

14.3.1 If and to the extent Tenant is obligated to restore the Improvements pursuant to this Article 14, Tenant shall restore the Improvements substantially in accordance with the Plans. Within one hundred eighty (180) days after the date of such damage or destruction, Tenant, at its cost, shall prepare and deliver to Landlord final plans and specifications and working drawings complying with applicable laws that will be necessary for such restoration. Such plans and specifications shall specify differences from the Plans. The plans and specifications and working drawings are subject to the approval of Landlord only insofar as they vary from the Plans. Landlord shall have thirty (30) days after receipt of the plans and specifications and working drawings to either approve or disapprove the plans and specifications and working drawings and return them to Tenant. If Landlord disapproves the plans and specifications and working drawings, Landlord shall notify Tenant of its objections in

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writing, specifying the objections clearly and stating what modifications are required for Landlord's approval. Tenant acknowledges that the plans and specifications and working drawings shall be subject to approval of the appropriate government bodies and that they will be prepared in such a manner as to obtain that approval, including the City in its regulatory capacity exercising its police powers, and that Landlord's approval of such plans and specifications and working drawings pursuant to this Lease shall not constitute the City's approval in its regulatory capacity.

14.3.2 The restoration shall be accomplished as follows:

(a) Tenant shall complete the restoration within eighteen (18) months after final plans and specifications and working drawings have been approved by the appropriate government bodies and all required permits have been obtained.

(b) Tenant shall retain a licensed contractor that is bondable. The contractor shall be required to carry public liability and property damage insurance, builders risk insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction in accordance with Article 9. Such insurance shall contain waiver of subrogation clauses in favor of Landlord and Tenant in accordance with the provisions of and to the extent required by Section 9.8.

(c) Tenant shall notify Landlord of the date of commencement of the restoration not later than ten (10) days before commencement of the restoration to enable Landlord to post and record notices of nonresponsibility. The contractor retained by Tenant shall not commence construction until a completion bond and a labor and materials bond have been delivered to Landlord to insure completion of the construction.

(d) Tenant shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption to the Property and the Improvements.

(e) On completion of the restoration Tenant shall immediately record a notice of completion.

(f) If Section 14.2.2 is applicable, the restoration shall not be commenced until sums sufficient to cover the cost of restoration are placed with the Insurance Trustee as provided in said Section 14.2.2.

14.4 **Mortgagee Protection**. The following provisions are for the protection of a Mortgagee and shall, notwithstanding anything contained in this Lease to the contrary, control:

14.4.1 **Insurance**. Any insurance proceeds payable from any policy of insurance (other than liability insurance) required by the Lease shall be paid to the

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Mortgagee, if any, to the extent required by the Mortgage. The Mortgagee, if any, shall have the right to participate in all adjustments, settlements, negotiations or actions with the insurance company regarding the amount and allocation of any such insurance proceeds. Any insurance policies permitted or required by this Lease shall name the Mortgagee, if any, as an additional insured or loss payee, as appropriate, if required by such Mortgage.

14.4.2 **Restoration.** Tenant shall have no obligation to restore or repair the Improvements following the occurrence of any casualty for which insurance is not required under this Lease. The Mortgagee, if any and if it exercises any of its remedies set forth in this Lease, shall have no obligation to restore or repair damage to the Improvements that cost in excess of available insurance proceeds. Tenant shall have no obligation to restore or repair damage to the Improvements if the casualty occurs during the last five (5) years of the Lease term. In the event such a loss occurs in the last five (5) years, then, at the election of Tenant, with the prior written consent of the Mortgagee, if any, insurance proceeds shall be used, first, to clear the Property of the damaged Improvements and any debris, and second, to reduce or pay in full the Mortgage, with any excess being payable as provided in this Lease. If such damage occurs in the last five years of the Term and results in a material portion of the Improvements being unusable, and Tenant elects not to repair or restore the damage, this Lease shall terminate and Tenant shall provide Landlord with any insurance proceeds received by Tenant.

**ARTICLE 15. EMINENT DOMAIN.**

15.1 **Notice.** The party receiving any notice of the kind specified in this Section 15.1 shall promptly give the other party notice of the receipt, contents and date of the notice received. For purposes of this Article 15, the term "Notice" shall include:

- (a) Notice of Intended Taking;
- (b) Service of any legal process relating to condemnation of the Property or the Improvements;
- (c) Notice in connection with any proceedings or negotiations with respect to such condemnation; or
- (d) Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

15.2 **Representation in Proceedings or Negotiations.** Landlord and Tenant shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of their claims. No agreements or settlement with or sale or transfer to the condemning authority shall be made without the consent of Landlord, but, as to its reversionary interest only, Landlord may enter into such agreement, settlement, sale or transfer without the consent of Tenant. Landlord and Tenant each agree to execute and deliver



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to the other any instruments which may be required to effectuate or facilitate the provisions of this Lease relating to condemnation.

### 15.3 **Total Taking.**

15.3.1 In the event of a Total Taking, this Lease shall terminate as of the date of the Taking.

15.3.2 If this Lease is terminated pursuant to this Section 15.3, the Award for such Taking shall be apportioned and distributed as follows:

15.3.2.1 First, to the Mortgagee, if any, to the extent of the Mortgage;

15.3.2.2 Second, to Landlord, a sum equal to the fair market value of the Property (subject to the remaining Term and the Rent reserved) on the date immediately preceding the Taking as determined by the appraisal method set forth in Article 16 and determined as if there were no taking nor threat of condemnation. The parties shall commence said appraisal by the earlier of ten (10) days after Tenant's receipt of a copy of a Notice of Intended Taking or ten (10) days after the date of the Taking;

15.3.2.3 Third, to Tenant, a sum equal to the fair market value of the Improvements made by Tenant on the date immediately preceding the Taking as determined by the appraisal method set forth in Article 16 and determined as if there were no Taking, nor threat of condemnation; plus the residual value of the Term, subject to the Rent reserved; plus any part of the Award attributable to the Low Income Housing Tax Credit; and

15.3.2.4 Fourth, to Landlord, the remainder, if any.

### 15.4 **Substantial Taking.**

15.4.1 In the event of a Taking which, in Tenant's reasonable judgment is substantial, Tenant may, subject to the rights of the Mortgagee, if any, terminate this Lease. If Tenant elects to terminate this Lease under this provision, Tenant shall give written notice of its election to do so to Landlord within forty-five (45) days after receipt of a copy of a Notice of Intended Taking. In the event Landlord disputes the right of Tenant to terminate this Lease under this provision, Landlord shall give Tenant notice of this fact within forty-five (45) days after receiving the notice of Tenant's election to terminate, and the parties shall either raise this issue in the eminent domain proceeding, if any, as an issue with respect to the apportionment of the Award between Landlord and Tenant or, if there is no eminent domain proceeding, submit the issue to arbitration as provided in Article 23 or other dispute resolution process mutually elected by Landlord and Tenant. In the event it is determined that Tenant does not have the right to terminate this Lease, the apportionment of the Award for such Taking and the obligations of Tenant to restore shall be governed by the terms of Section 15.6 or Section 15.8 whichever is applicable.

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15.4.2 In the event it is determined that Tenant has the right to terminate this Lease, or in the event Landlord does not dispute Tenant's right to terminate this Lease, such termination shall be as of the time when the Taking entity takes possession of the portion of the Property and the Improvements taken. In such event, the Award for such Substantial Taking (including any award for severance, consequential or other damages which will accrue to the portion of the Property and/or the Improvements not taken) shall be apportioned and distributed as follows:

- (a) First, to the Mortgagee, if any, to the extent of the Mortgage;
- (b) Second, to Landlord, a sum equal to the fair market value of the Property taken (subject to the remaining Term and the Rent reserved) immediately preceding the date of the Taking as determined by the appraisal process provided for in Article 16, commenced as provided in Section 15.3.2, and as modified by Section 15.6.3;
- (c) Third, to Landlord, an amount equal to the portion of the award for severance, consequential or other damages which accrued to the portion of the Property and/or Improvements not taken;
- (d) Fourth, to Tenant a sum equal to the fair market value of the Improvements made by Tenant taken immediately preceding the date of the Taking as determined by the appraisal process provided for in Article 16, commenced as provided in Section 15.3.2, and as modified by Section 15.6.3; plus the residual value of the Term, subject to the Rent reserved; plus any part of the Award attributable to the Low Income Housing Tax Credit; and
- (e) Fifth, to Landlord, the remainder, if any.

15.5 **Tenant's Right to Revoke Notice of Termination.** Notwithstanding anything to the contrary contained in Section 15.4, if Tenant has elected to terminate this Lease, and the taking authority abandons or revises the Taking, Tenant shall have forty-five (45) days from receipt of written notice of such abandonment or revision to revoke its notice of termination of this Lease.

#### 15.6 **Partial Taking.**

15.6.1 In the event of a Partial Taking, this Lease shall continue in full force and effect and there shall be no abatement in or reduction of any of Tenant's obligations hereunder.

15.6.2 The Award for such Partial Taking shall be apportioned and distributed first to the Mortgagee, if any, to the extent of the Mortgage, then to Landlord and Tenant in proportion to the fair market value of their respective interests in the Property and Improvements, as such interests existed immediately prior to such Partial Taking. Tenant's only interest in the Property and the Improvements for purposes of this Section 15.6.2 is in those Improvements constructed by Tenant. Notwithstanding

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anything contained herein to the contrary, any part of the Award attributable to the Low Income Housing Tax Credit shall belong to Tenant.

15.6.3 The fair market value of the parties' respective interests in the Property and the Improvements shall be determined by the appraisal process provided in Article 16, except that the assumptions listed in such Article shall not apply. Rather, the appraisal shall be based on the value of the Property as improved and encumbered by this Lease and on the value of the Improvements as they stand, but without regard to any Taking or threat of condemnation.

15.6.4 Any Award for severance, consequential or other damages which accrues by reason of the Partial Taking to the portion of the Property or the Improvements not taken shall be distributed first to the Mortgagee, if any, to the extent of the Mortgage, then shall be apportioned between Landlord and Tenant in accordance with the diminution in value of their respective interests.

15.7 **Obligation to Repair on Partial Taking.** Promptly after any Partial Taking and regardless of the amount of the Award for such Taking, Tenant shall, to the extent of the Award received by Tenant and in the manner specified in the provisions of this Lease, repair, alter, modify or reconstruct the Improvements and/or other improvements on the Property so as to make them usable for the designated purpose and capable of producing a fair and reasonable net income.

15.8 **Temporary Taking.**

15.8.1 In the event of a Temporary Taking of the whole or any part of the Property and/or Improvements, the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full any sum or sums of money and charges herein reserved and provided to be paid by Tenant, and, subject to the other provisions of this Section 15.8, Tenant shall be entitled to any Award or payment for the temporary use of the Property and/or Improvements prior to the termination of this Lease, and Landlord shall be entitled to any Award or payment for such use after the termination of this Lease.

15.8.2 If possession of the Property and/or Improvements shall revert to Tenant prior to the expiration of the Term, Tenant shall, unless at such time there remains less than five (5) years in the Term, restore the Property and/or Improvements whether or not the Taking authority has made any Award or payment for such restoration and regardless of the amount of any award or payment and in all other respects indemnify and hold Landlord harmless from the effects of such Taking so that the Property and/or Improvements in every respect shall upon completion of such restoration be in the same condition as they were prior to the taking thereof.

15.8.3 If possession of the Property shall revert to Landlord after expiration of the Term, any sums deposited pursuant to this Section 15.8 shall be paid over to Landlord in their entirety and without apportionment and Tenant shall be excused from its obligation to restore the Property and/or Improvements.

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15.8.4 Any Award or payment for damages or cost of restoration made on or after the termination of this Lease shall be paid first to the Mortgagee, if any, to the extent of the Mortgage, then to Landlord absolutely, together with the remaining balance of any other funds paid to Tenant for such damages or cost of restoration and Tenant shall thereupon be excused from any obligation to restore the Property and/or Improvements upon the termination of such Temporary Taking except that any obligation that may have accrued for Tenant to restore the Property and/or Improvements prior to the commencement of said Temporary Taking shall continue to be the obligation of Tenant.

15.9 **Mortgagee Protection.** Notwithstanding anything contained in this Lease to the contrary, any and all condemnation proceeds shall be paid first to the Mortgagee, if any, to be applied to reduce the Mortgage if required by the mortgage documents.

## **ARTICLE 16. APPRAISAL.**

Whenever an appraisal of the Property is called for pursuant to Article 15 of this Lease, the parties shall use the following procedure:

16.1 **Appointment of Appraiser.** Within ten (10) days after notice from Landlord to Tenant, Landlord and Tenant shall each appoint an MAI appraiser to participate in the appraisal process provided for in this Article 16 and shall give written notice thereof to the other party. Upon the failure of either party so to appoint, the nondefaulting party shall have the right to apply to the Superior Court of Santa Clara County, California, to appoint an appraiser to represent the defaulting party. Within ten (10) days of the parties' appointment, the two (2) appraisers shall jointly appoint a third MAI appraiser and give written notice thereof to Landlord and Tenant, or if within ten (10) days of the appointment of said appraisers the two (2) appraisers shall fail to appoint a third, then either party hereto shall have the right to make application to said Superior Court to appoint such third appraiser.

### **16.2 Determination of Fair Market Value.**

16.2.1 Within thirty (30) days after the appointment of the third appraiser, the appraisers shall determine the fair market value of the Property and the Improvements in accordance with the provisions hereof, and shall execute and acknowledge their determination of fair market value in writing and cause a copy thereof to be delivered to each of the parties hereto.

16.2.2 The appraisers shall determine the fair market value of the Property and the Improvements as of the date of Landlord's notice referred to in Section 16.1 above, based on sales of comparable property in the area in which the Property is located. If, however, in the judgment of a majority of the appraisers, no such comparable sales are available, then the appraisal shall be based on the following assumptions: (i) that the Property is free and clear of this Lease, the Improvements and all other improvements, and all easements and encumbrances; and (ii) that the Property is available for immediate sale and development for the purposes and at the density and

intensity of development permitted under the zoning, subdivision and land use planning ordinances and regulations applicable to the Property in effect on the Commencement Date of this Lease, and any changes or amendments thereto or modification or variance from the provisions thereof or conditional use permits which could reasonably be anticipated to have been granted or approved as of the date of this Lease. Notwithstanding anything contained herein to the contrary, if the appraisal, for the particular purposes for which it is being done, should reasonably reflect the rent restrictions imposed on the Property pursuant to Article 8 of this Lease, then such rent restrictions shall be taken into consideration by the appraisers.

16.2.3 If a majority of the appraisers are unable to agree on fair market value within thirty (30) days of the appointment of the third appraiser, the three (3) appraisals shall be added together and their total divided by three (3). The resulting quotient shall be the fair market value of the Property and the Improvements. If, however, the low appraisal and/or high appraisal is or are more than ten percent (10%) lower and/or higher than the middle appraisal, the low and/or high appraisal shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two (2). The resulting quotient shall be the fair market value of the Property and the Improvements. If both the low and high appraisals are disregarded, the middle appraisal shall be the fair market value of the Property.

16.3 **Payment of Fees.** Each of the parties hereto shall (a) pay for the services of its appointee, (b) pay one-half (1/2) of the fee charged by the appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisal.

## **ARTICLE 17. ASSIGNMENT.**

### **17.1 Prohibition Against Transfer.**

17.1.1 **Prior to Recordation of the Certificate of Completion.** Prior to recordation of the Certificate of Completion, but subject to Article 19 pursuant to which Tenant is permitted to sublease the Units for residential occupancy, Tenant shall not assign or attempt to assign this Lease or any right herein without the prior written consent of Landlord, which consent may be withheld in Landlord's absolute discretion.

17.1.2 **Following Recordation of the Certificate of Completion.** Following recordation of the Certificate of Completion, but subject to Article 19 pursuant to which Tenant is permitted to sublease the Units for residential occupancy, Tenant shall not assign or attempt to assign this Lease or any right herein, nor make any total or partial sublease, sale, transfer, conveyance or assignment of the whole or any part of the Property or the Improvements thereon, without the prior written consent of Landlord, which consent shall not be granted in Landlord's sole discretion. In the absence of specific written agreement by Landlord, no unauthorized sublease, sale, transfer, conveyance or assignment of the Property, or any portion thereof, or approval thereof by Landlord shall be deemed to relieve Tenant or any other party from any obligations under this Lease.

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17.1.3 **Qualifications of Tenant.** In connection with the above prohibition and limitation on assignments, Tenant acknowledges that the qualifications, expertise and identities of Tenant are of particular concern to Landlord, and that Landlord continues to rely on such expertise to ensure the satisfactory completion of the construction and operation of the Improvements on the Property. Tenant further recognizes that it is because of such qualifications and identities that Landlord is entering into this Lease with Tenant. No voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease except as expressly set forth in the Lease.

17.1.4 **Assignment Agreement.** No assignment of any interest in the Lease made with Landlord's consent or as herein otherwise permitted shall be effective unless and until there shall have been delivered to Landlord an executed counterpart of such assignment or other transfer document containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein such assignee assumes due performance of the obligations on the assignor's part to be performed under this Lease from the effective date of the assignment to the end of the Term.

17.1.5 **Further Assignments.** The consent by Landlord to an assignment shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment if required by the terms of this Lease.

17.2 **Reserved.**

17.3 **Other Rights of Mortgagees.** Landlord agrees that none of the restrictions or limitations on assignment or transfer by Tenant set forth in this Article 17 shall be construed to limit or abrogate the rights of a Mortgagee to (a) seek the appointment of a receiver, or (b) delegate or assign its rights under this Lease to any third party in connection with the exercise of said Mortgagee's rights and remedies under its Mortgage.

17.4 **Limitation on Transfer by Landlord.** Landlord agrees, during the Compliance Period, not to transfer its interest in the Property or under this Lease without the prior written approval of the Tax Credit Partner; provided, however, no such approval shall be required for such a transfer to another public body.

17.5 **Transfer by Tax Credit Partner.** Notwithstanding the foregoing limitations on transfer and assignment, nothing herein shall limit or condition a transfer, sale, assignment or other conveyance of all or a portion of the limited partner interests of the Tax Credit Partner to any affiliate of the Tax Credit Partner, and the interests of the Tax Credit Partner shall be freely transferable to any affiliate of the Tax Credit Partner without the consent or approval of but only with prior, written notice to Landlord; provided however that in the event of non-payment of capital contribution obligations by the transferee pursuant to the terms and conditions of the Tenant's Partnership Agreement, the Tax Credit Partner shall remain liable for the amount of such unpaid capital contribution obligations.

**ARTICLE 18. MORTGAGES.****18.1 Leasehold Mortgages.**

18.1.1 **General Provisions.** At all times during the Term, Tenant shall have the right to mortgage, pledge, deed in trust, assign rents, issues and profits and/or collaterally (or absolutely for purposes of security if required by any lender) assign its interest in this Lease, or otherwise encumber this Lease, and/or the interest of Tenant hereunder, in whole or in part, and any interests or rights appurtenant to this Lease, and to assign or pledge the same as security for any debt approved by the Landlord (the holder of any such mortgage, pledge or other encumbrance, and the beneficiary of any such deed of trust being hereafter referred to as "Mortgagee" and the mortgage, pledge, deed of trust or other instrument hereafter referred to as "Mortgage"), upon and subject to each and all of the following terms and conditions:

(a) Prior to issuance of a Certificate of Completion, Mortgages entered into by Tenant shall be limited in purpose to and shall not exceed the amount necessary and appropriate to develop the Improvements, and to acquire and install equipment and fixtures thereon. Said amount shall include all hard and soft costs of acquisition, development, construction, lease-up and operation of the Improvements.

(b) Any permitted Mortgages entered into by Tenant are to be originated only by lenders approved in writing by Landlord, which approval will not be unreasonably withheld. Landlord shall state the reasons for any such disapproval.

(c) All rights acquired by said Mortgagee shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord thereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Mortgage.

If Tenant encumbers its leasehold estate by way of a Mortgage as permitted herein, and should Landlord be advised in writing of the name and address of the Mortgagee, then this Lease shall not be terminated or canceled on account of any Event of Default by Tenant in the performance of the terms, covenants or conditions hereof until Landlord shall have complied with the provisions of Section 18.2 as to the Mortgagee's rights to cure and to obtain a new lease.

18.1.2 **Consent of Mortgagee Required.** No cancellation, surrender, termination, or modification of this Lease shall be effective without the written consent of the holder of any Mortgage approved by Landlord.

18.2 **Rights and Obligations of Leasehold Mortgagees.** If Tenant shall mortgage the leasehold interest herein demised, then, as long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

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18.2.1 **No Cancellation.** Landlord will not cancel, accept a surrender of, terminate or modify this Lease in the absence of a default by Tenant without the prior consent in writing of the Mortgagee.

18.2.2 **Notice of Defaults.** Landlord agrees to give each Mortgagee immediate notice of all defaults by Tenant under the Lease, and to simultaneously give to each Mortgagee a written copy of all notices and demands that Landlord gives to Tenant. No notice or demand under the Lease shall be effective until after notice is received by Mortgagee. Any notices of default given by Landlord under the Lease shall describe the default(s) with reasonable detail. Each Mortgagee shall have the right to cure any breach or default within the time periods given below.

18.2.3 **Mortgagee's Cure Rights.**

(a) **Notice and Cure.** After receipt by Tenant of a notice of default under the Lease and the expiration of any applicable period of cure given to Tenant under the Lease, Landlord shall deliver an additional notice ("Mortgagee's Notice") to each Mortgagee specifying the default and stating that Tenant's period of cure has expired. Each Mortgagee shall thereupon have the additional periods of time to cure any uncured default, as set forth below. Landlord shall not terminate the Lease or exercise its other remedies under the Lease if:

(i) Within ninety (90) days after Mortgagee's receipt of the Mortgagee's Notice, any Mortgagee (i) cures the default, or (ii) if the default reasonably requires more than ninety (90) days to cure, commences to cure said default within such ninety (90)-day period and thereafter diligently prosecutes the same to completion; or

(ii) Where the default cannot be cured by payment or expenditure of money or without possession of the Property or otherwise, Mortgagee initiates foreclosure or other appropriate proceedings within ninety (90) days after receipt of the Mortgagee's Notice, thereafter cures all other defaults reasonably capable of cure by the payment of money to Landlord, and thereafter continues to pay all rents, real property taxes and assessments, and insurance premiums to be paid by Tenant under the Lease. Mortgagee shall then have ninety (90) days following the later to occur of (i) the date of execution and delivery of a new lease of the Property pursuant to Section 18.2.4 of the Lease (a "New Lease"), or (ii) the date on which Mortgagee or its nominee is able to occupy the Property following foreclosure under such Mortgage and the eviction of or vacating by Tenant of the leased premises, to cure such default; provided, however, that if any such default, by its nature, is such that it cannot practicably be cured within ninety (90) days, then Mortgagee shall have such additional time as shall be reasonably necessary to cure the default provided that Mortgagee



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commences such cure within such ninety (90)-day period and thereafter diligently prosecutes the cure to completion.

(b) Landlord agrees to accept performance by Mortgagee of all cures, conditions and covenants as though performed by Tenant, and agrees to permit Mortgagee access to the Property to take all such actions as may be necessary or useful to perform any condition or covenants of the Lease or to cure any default of Tenant. Mortgagee shall not be required to perform any act or cure any default which is not reasonably susceptible to performance or cure by Mortgagee.

(c) If Mortgagee elects any of the above-mentioned options, then upon Mortgagee's acquisition of the Lease by foreclosure, whether by power of sale or otherwise or by deed or assignment in lieu of foreclosure, or if a receiver be appointed, the Lease shall continue in full force and effect, provided that, if Mortgagee elects the option provided in Section 18.2.3(a)(ii) above, then upon Mortgagee's acquisition of the Lease, Mortgagee shall cure all prior defaults of Tenant under the Lease that are reasonably capable of being cured by Mortgagee within the time set forth in said Section, and Landlord shall treat Mortgagee as Tenant under the Lease. If Mortgagee commences an action as set forth in Section 18.2.3(a)(ii) above, and thereafter Tenant cures such defaults (which cure Landlord shall be obligated to accept) and Mortgagee then terminates all proceedings under the option in said Section, then the Lease shall remain in full force and effect between Landlord and Tenant.

**18.2.4 New Lease.** In the event the Lease is terminated for any reason prior to the end of the Lease Term, Landlord shall promptly give Mortgagee written notice of such termination and shall enter into a new lease ("New Lease") with Mortgagee or Mortgagee's nominee covering the Property, provided that Mortgagee (a) requests such New Lease by written notice to Landlord within sixty (60) days after Mortgagee's receipt of written notice by Landlord of termination of the Lease, and (b) cures all prior defaults of Tenant that are reasonably capable of being cured by Mortgagee. The New Lease shall be for the remainder of the Lease Term, effective at the date of such termination, and shall include all the rents and all the covenants, agreements, conditions, provisions, restrictions and limitations contained in the Lease, except as otherwise provided in the Lease. In connection with a New Lease, Landlord shall assign to Mortgagee or its nominee all of Landlord's interest in all existing subleases of all or any part of the Property and all attornments given by the sublessees. Landlord shall not terminate or agree to terminate any sublease or enter into any new lease or sublease for all or any portion of the Property without Mortgagee's prior written consent, unless Mortgagee fails to deliver its request for a New Lease under this Section. In connection with any such New Lease, Landlord shall, by grant deed, convey to Mortgagee or its nominee title to the Improvements, if any, which become vested in Landlord as a result of termination of the Lease.

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18.2.5 **Security Deposits.** Mortgagee or any other purchaser at a foreclosure sale of the Mortgage (or Mortgagee or its nominee if one of them enters into a New Lease with Landlord) shall succeed to all the interest of Tenant in any security or other deposits or other impound payments paid by Tenant to Landlord.

18.2.6 **Permitted Delays.** So long as Mortgagee is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant or any other person, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, Mortgagee shall not be deemed for that reason to have failed to commence such proceedings or to have failed to diligently prosecute such proceedings, provided that Mortgagee uses reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

18.2.7 **Defaults Deemed Cured.** On transfer of the Lease at any foreclosure sale under the Mortgage or by deed or assignment in lieu of foreclosure, or upon creation of a New Lease, any or all of the following defaults relating to the prior owner of the Lease shall be deemed cured:

- (a) Attachment, execution or other judicial levy upon the Lease;
- (b) Assignment of the Lease for the direct or indirect benefit of creditors of the prior Tenant;
- (c) Judicial appointment of a receiver or similar officer to take possession of the Lease;
- (d) Filing any petition by, for or against Tenant under any chapter of the federal Bankruptcy Act or any federal or state debtor relief statute, as amended;
- (e) Any failure by Tenant to make a disclosure of a hazardous substance release as required by the California Health and Safety Code, the Lease or otherwise; and
- (f) Any other non-monetary defaults personal to Tenant and/or not otherwise reasonably curable by Mortgagee.

18.2.8 Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of Mortgages. If the holders of more than one such Mortgage shall make written requests upon Landlord in accordance with this Lease, the new lease (as provided for in subsection 18.2.4 above) shall be entered into pursuant to the request of the holder whose Mortgage shall be prior in lien thereto and thereupon the written requests for a new lease of each holder of a Mortgage junior in lien shall be and be deemed to be void and of no force or effect.

### **18.3 Landlord's Forbearance and Right to Cure Defaults on Leasehold Mortgages.**

18.3.1 **Notice.** Landlord will give to Mortgagee, at such address as is specified by the Mortgagee in accordance with Section 26.1 hereof, a copy of each notice or other communication with respect to any claim that a default exists or is about to exist from Landlord to Tenant hereunder at the time of giving such notice or communication to Tenant, and Landlord will give to Mortgagee a copy of each notice of any rejection of this Lease by any trustee in bankruptcy of Tenant. Landlord will not exercise any right, power or remedy with respect to any Event of Default hereunder, and no notice to Tenant of any such Event of Default and no termination of this Lease in connection therewith shall be effective, unless Landlord has given to Mortgagee written notice or a copy of its notice to Tenant of such Event of Default or any such termination, as the case may be.

18.3.2 **Mortgagee's Transferees, Etc.** In the event the leasehold estate hereunder shall be acquired by foreclosure, trustee's sale or deed or assignment in lieu of foreclosure of a Mortgage, the purchaser at such sale or the transferee by such assignment and its successors as holders of the leasehold estate hereunder shall not be liable for any Rent, if any, or other obligations accruing after its or their subsequent sale or transfer of such leasehold estate and such purchaser or transferee and its successors shall be entitled to transfer such estate or interest without consent or approval of Landlord; provided that, the purchaser or transferee or successor as holder of the leasehold estate hereunder shall be liable for the payment of all Rent, if any, becoming due with respect to the period during which such purchaser, transferee or other successor is the holder of the leasehold estate hereunder. This Section shall also apply to the rights of a Mortgagee in connection with the entry into a new lease under Section 18.2.4 and to the appointment of a receiver on behalf of a Mortgagee.

18.3.3 **Insurance and Condemnation.** In the event of any casualty to, or condemnation of, all or any part of the leased premises or any improvements now or hereafter located thereon, the provisions of the Mortgages relating thereto shall prevail over any provisions of this Lease relating thereto.

18.4 **No Liability of Mortgagee for Prior Indemnified Acts.** A Mortgagee shall not be obligated to assume the liability of Tenant for any indemnities arising for a period prior to Mortgagee's acquiring the right to possession of the Property under this Lease.

18.5 **Landlord Cooperation.** At the request of Tenant or any proposed or existing Mortgagee, Landlord shall promptly execute and deliver (i) any documents or instruments reasonably requested to evidence, acknowledge and/or perfect the rights of Mortgagees as herein provided; and (ii) an estoppel certificate certifying the status of this Lease and Tenant's interest herein and such matters as are reasonably requested by Tenant or such Mortgagees. Such estoppel certificate shall include, but not be limited to, certification by Landlord that (a) this Lease is unmodified and in full force and effect (or, if modified, state the nature of such modification and certify that this Lease, as

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so modified, is in full force and effect), (b) all rents currently due under the Lease have been paid, (c) there are not, to Landlord's knowledge, any uncured Events of Default on the part of Tenant under the Lease or facts, acts or omissions which with the giving of notice or passing of time, or both, would constitute an Event of Default. Any such estoppel certificate may be conclusively relied upon by any proposed or existing leasehold Mortgagee or assignee of Tenant's interest in this Lease.

18.6 **Priority.** The Lease, and any extensions, renewals or replacements thereof, and any sublease entered into by Tenant as sublessor, and any Mortgage or other encumbrance recorded by any Mortgagee shall be superior to any mortgages, deeds of trust or similar encumbrances placed by Landlord on the Property and to any lien right, if any, of Landlord on the buildings, and any furniture, fixtures, equipment or other personal property of Tenant upon the Property or any interest of Landlord in sublease rentals or similar agreements.

18.7 **Claims.** Landlord and Tenant shall deliver to Mortgagee notice of any litigation or arbitration proceedings between the parties or involving the Property or the Lease. Mortgagee shall have the right, at its option, to intervene and become a party to any such proceedings. If Mortgagee elects not to intervene or become a party, Landlord shall deliver to Mortgagee prompt notice of and a copy of any award, decision or settlement agreement made in connection with any such proceeding.

18.8 **Further Amendments.** Landlord and Tenant shall cooperate in including in the Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Mortgagee for the purpose of implementing the mortgagee protection provisions contained in this Lease and allowing that Mortgagee reasonable means to protect or preserve the lien of its Mortgage upon the occurrence of a default under the terms of the Lease. Landlord and Tenant each agree to execute and deliver (and to acknowledge for recording purposes, if necessary) any agreement required to effect any such amendment.

## **ARTICLE 19. SUBLEASING.**

19.1 **Subleasing of Property.** All subleases ("Subleases") made by Tenant shall be subject to the following provisions and restrictions:

19.1.1 Tenant may, without the consent of Landlord, let individual units of the Improvements to any person who qualifies.

19.1.2 Each Sublease shall contain a provision requiring the Subtenant to attorn to Landlord upon (a) an Event of Default by Tenant under this Lease, and (b) receipt by such Subtenant of written notice of such Event of Default and instructions to make such Subtenant's rental payments to Landlord.

19.1.3 On any termination of this Lease prior to the expiration of the Term, all of Tenant's interest as sublessor under any and all existing valid and enforceable Subleases for which Landlord has issued a non-disturbance agreement shall be deemed automatically assigned, transferred and conveyed to Landlord and subtenants

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under such Subleases shall be deemed to have attorned to Landlord. Landlord shall thereafter be bound on such Subleases to the same extent Tenant, as sublessor, was bound thereunder and Landlord shall have all the rights under such Subleases that Tenant, as sublessor, had under such Subleases; provided, however, that any amendments to any such Sublease made after the issuance of a non-disturbance agreement to a subtenant shall not be binding on Landlord.

19.1.4 Any subtenant qualifying shall, upon written request, receive a non-disturbance agreement from Landlord.

19.1.5 Not later than thirty (30) days after each anniversary of the date of commencement of the term of this Lease, Tenant shall deliver to Landlord a current list of the name and mailing address of each Subtenant.

19.1.6 Tenant shall not accept, directly or indirectly, more than two (2) months prepaid rent plus a reasonable security deposit from any subtenant.

19.1.7 Each Sublease shall expressly provide that it is subject to each and all of the covenants, conditions, restrictions and provisions of this Lease.

19.2 **Nondisturbance Agreements**. Landlord shall execute nondisturbance agreements with any Subtenant, which nondisturbance agreement shall provide that (a) so long as such Subtenant has not defaulted under the terms of the Sublease, such Subtenant's rights will not be terminated by Landlord on Landlord's exercise of Landlord's right to terminate the Lease for Tenant's breach, and (b) Landlord shall not be bound by prepayments of more than one month's rent in advance or security deposits in excess of one month's rent under such nondisturbance agreement unless such excess prepayment and/or deposit has, in fact, been transferred to Landlord.

19.3 **Rights of Mortgagees**. Notwithstanding anything contained in this Lease to the contrary, all attornment provisions applicable to the Landlord shall also be applicable to a Mortgagee and, as between Landlord and Mortgagee, the Mortgagee shall have priority in any attornment situation.

19.4 **Notice and Right to Cure Defaults Under Mortgages**. Landlord may record in the Official Records a request for notice of any default under the Mortgages or other financing secured by the Project. In the event of default by Tenant under the Mortgages or other financing secured by the Project, Landlord shall have the right, but not the obligation, to cure the default within the cure periods available to Tenant and its partners. Any payments made by Landlord to cure a default shall be treated as Rent due from Tenant and shall be paid to Landlord with interest at the rate set forth in Section 4.5 within thirty (30) days following the date on which the payment was made by Landlord.

**ARTICLE 20. PERFORMANCE OF TENANT'S COVENANTS.**

20.1 **Right of Performance.** If Tenant shall at any time fail to pay any Imposition or other charge in accordance with Article 4 hereof, within the time period therein permitted, or shall fail to pay for or maintain any of the insurance policies provided for in Article 9 hereof, within the time therein permitted, or to make any other payment or perform any other act on its part to be made or performed hereunder, within the time permitted by this Lease, then Landlord, after thirty (30) days' written notice to Tenant (or, in case of an emergency, on such notice, or without notice, as may be reasonable under the circumstances) and without waiving or releasing Tenant from any obligation of Tenant hereunder, may (but shall not be required to):

(a) pay such Imposition or other charge payable by Tenant pursuant to the provisions of Article 4 hereof, or

(b) pay for and maintain such insurance policies provided for in Article 9 hereof, or

(c) make such other payment or perform such other act on Tenant's part to be made or performed as in this Lease provided.

20.1.2 **Rights of Mortgagees.** Notwithstanding anything contained in this Lease to the contrary, all of the performance rights available to Landlord under Section 20.1 shall also be available to Mortgagee and, as between Landlord and Mortgagee, the rights of the Mortgagee shall take precedence over the rights of Landlord.

20.2 **Reimbursement and Damages.** All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the rate provided in Section 4.5 from the respective dates of Landlord's making of each such payment or incurring of each such cost or expense, shall be paid by Tenant to Landlord on demand. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Improvements, occurring during any period in which Tenant shall have failed or neglected to provide insurance as aforesaid.

**ARTICLE 21. EVENTS OF DEFAULT; REMEDIES.**

21.1 **Events of Default.** Any one or all of the following events shall constitute an Event of Default hereunder:

## DDA EXHIBIT E

21.1.1 If Tenant shall default in the payment of any Rent when and as the same becomes due and payable and such default shall continue for more than fifteen (15) days after Landlord shall have given written notice thereof to Tenant; or

21.1.2 Default or delinquency in the payment of any loan secured by a Mortgage permitted by this Lease to be placed by Tenant against its leasehold interest in the Property after expiration of any cure period provided therein, but only if such default or delinquency is not waived by the applicable Mortgagee; or

21.1.3 The abandonment or vacation of the Property by Tenant for a period of thirty (30) days; or

21.1.4 The entry of any decree or order for relief by any court with respect to Tenant, or any assignee or transferee of Tenant (hereinafter "Assignee"), in any involuntary case under the Federal Bankruptcy Code or any other applicable federal or state law; or the appointment of or taking possession by any receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any Assignee (unless such appointment is in connection with a Mortgagee's exercise of its remedies under its Mortgage), or of any substantial part of the property of Tenant or such Assignee, or the ordering or winding up or liquidating of the affairs of Tenant or any Assignee and the continuance of such decree or order unstayed and in effect for a period of ninety (90) days or more (whether or not consecutive); or the commencement by Tenant or any such Assignee of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal law or consent by Tenant or any such Assignee to the entry of any order for relief in an involuntary case under any such law, or consent by Tenant or any such Assignee to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any such Assignee, or of any substantial property of any of the foregoing, or the making by Tenant or any such Assignee of any general assignment for the benefit of creditors; or Tenant or any such Assignee takes any other voluntary action related to the business of Tenant or any such Assignee or the winding up of the affairs of any of the foregoing.

21.1.5 If Tenant shall default in the performance of or compliance with any other term, covenant or condition of this Lease (other than as set forth in Sections 21.1.1 and 21.1.2 of this Section 21.1) and such default shall continue for more than thirty (30) days after Landlord shall have given written notice thereof to Tenant, provided, however, if cure of such default reasonably requires more than thirty (30) days, then, provided that Tenant commences to cure within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure to completion, Tenant shall not be in default during the cure period.

## 21.2 Remedies.

21.2.1 If an Event of Default shall occur and continue as aforesaid, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and bring suit against Tenant or

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submit the issue of Tenant's default to arbitration as provided in Article 23 and recover as an award in such suit or arbitration proceeding the following:

- (a) the worth at the time of award of the unpaid rent and all other sums due hereunder which had been earned at the time of termination;
- (b) the worth at the time of award of the amount by which the unpaid rent and all other sums due hereunder which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;
- (c) the worth at the time of award of the amount by which the unpaid rent and all other sums due hereunder for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;
- (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things could be likely to result therefrom; and
- (e) such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

21.2.2 The "*worth at the time of the award*" of the amounts referred to in subparagraphs 21.2.1(a) and 21.2.1(b) above shall be computed by allowing interest at the rate provided in Section 4.5 as of the date of the award. The "*worth at the time of award*" of the amount referred to in subparagraph 21.2.1(c) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

21.2.3 If an Event of Default occurs, Landlord shall also have the right, with or without terminating this Lease, but subject to any nondisturbance agreements entered into with Subtenants, to reenter the Property and remove all persons and property from the Property; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

21.2.4 If an Event of Default occurs, Landlord shall also have the right, with or without terminating this Lease, to relet the Property. If Landlord so elects to exercise its right to relet the Property but without terminating this Lease, then rentals received by Landlord from such reletting shall be applied: First, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; Second, to the payment of any cost of such reletting; Third, to the payment of the cost of any alterations and repairs to the Property; Fourth, to the payment of rent due and unpaid hereunder; and Fifth, the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should the amount of rental received from such reletting during any month which is applied to the payment of rent hereunder be less than that agreed to be paid during that month by



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Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making alterations and repairs not covered by the rentals received from such reletting.

21.2.5 No reentry or taking possession of the Property by Landlord pursuant to Sections 21.2.3 or 21.2.4 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Tenant because of any default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such default.

21.3 **Receipt of Rent, No Waiver of Default.** The receipt by Landlord of the rents or any other charges due to Landlord, with knowledge of any breach of this Lease by Tenant or of any default on the part of Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provisions of this Lease. No acceptance by Landlord of a lesser sum than the rents or any other charges then due shall be deemed to be other than on account of the earliest installment of the rents or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent or charges due be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in this Lease. The receipt by Landlord of any rent or any other sum of money or any other consideration paid by Tenant after the termination of this Lease, or after giving by Landlord of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Lease, reinstate, continue, or extend the term of this Lease, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by Landlord to Tenant prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Property or the Improvements, excepting only an agreement in writing signed by Landlord accepting or agreeing to accept such a surrender.

21.4 **Effect on Indemnification.** Notwithstanding the foregoing, nothing contained in this Article 21 shall be construed to limit the Indemnitees' right to indemnification as otherwise provided in this Lease.

21.5 **Limited Waiver of Right to Terminate Lease.** Landlord hereby waives its right to terminate this Lease during the Compliance Period for a non-monetary default by Tenant. That notwithstanding, Landlord, during the Compliance Period, shall retain all other rights and remedies available hereunder or by law for such non-monetary default, including, without limitation, an action to compel performance of the covenant or condition that is the subject of the alleged default.

**ARTICLE 22. PERMITTED CONTESTS.**

Tenant, at no cost or expense to Landlord, may contest (after prior written notice to Landlord), by appropriate legal proceedings conducted with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien or any Legal Requirement or Insurance Requirement, provided that (a) in the case of liens of mechanics, materialmen, suppliers or vendors, or Impositions or liens therefor, such proceedings shall suspend the collection thereof from Landlord, and shall suspend a foreclosure against the Property and/or the Improvements, or any interest therein, or any Rent, if any, (b) neither the Property or the Improvements, nor any part thereof or interest therein, or the Rent, if any, or any portion thereof, would be in any danger of being sold, forfeited or lost by reason of such proceedings, (c) in the case of a Legal Requirement, Landlord would not be in any danger of any criminal liability or, unless Tenant shall have furnished a bond or other security therefor satisfactory to Landlord, any additional civil liability for failure to comply therewith and the Property and the Improvements would not be subject to the imposition of any lien as a result of such failure, and (d) Tenant shall have furnished to Landlord, if requested, a bond or other security, satisfactory to Landlord. If Tenant shall fail to contest any such matters, or to give Landlord security as hereinabove provided, Landlord may, but shall not be obligated to, contest the matter or settle or compromise the same without inquiring into the validity or the reasonableness thereof. Landlord, at the sole cost and expense of Tenant, will cooperate with Tenant and execute any documents or pleadings legally required for any such contest.

**ARTICLE 23. ARBITRATION OF DISPUTES.**

23.1 **Matters Subject to Arbitration.** All disputes arising under this Lease may be submitted to arbitration upon mutual agreement of the parties, except that any dispute relating to the following rights and obligations shall not be subject to arbitration:

23.1.1 Tenant's obligation to:

- (a) pay Rent, if any, and other charges due under this Lease;
- (b) indemnify Landlord as provided herein; and
- (c) keep the Property and the Improvements free and clear of any mechanics' or other liens:

23.1.2 Landlord's right to:

- (a) pursue any of the remedies defined in Article 21; and
- (b) assign, transfer, sell or encumber its interest in the Property or this Lease;

## DDA EXHIBIT E

23.1.3 Any right or obligation the exercise or performance of which is dependent on Landlord's approval, if the issue is the reasonableness of Landlord's action.

23.1.4 Any right of the Mortgagee to exercise its remedies under its Mortgage or in connection with the bankruptcy of the Tenant or Landlord.

23.2 **Arbitration Process**. If the parties agree on arbitration, the dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The parties prior to commencing arbitration must mutually agree upon whether the arbitration will be binding or not.

## **ARTICLE 24. FORCE MAJEURE.**

24.1 Subject to Section 24.2 below, any prevention, delay, nonperformance or stoppage by Tenant due to any of the following causes shall be excused: war; insurrection; strikes; lockouts; riots; casualties; natural disasters that are not caused by and are outside the reasonable control of the Tenant, including without limitation floods, earthquakes, and fires; acts of the public enemy; epidemics, quarantine restrictions; or freight embargos;.

24.2 No prevention, delay, or stoppage of performance shall be excused unless:

24.2.1 Tenant notifies Landlord within thirty (30) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Article 24; and

24.2.2 Landlord accepts such notice within ten (10) days of receipt of such notice, or is deemed to have accepted such notice if it fails to respond within such ten (10) day period.

24.2.3 Tenant diligently proceeds within thirty (30) days of the conclusion of such prevention, delay or stoppage to cure the condition causing the prevention, delay or stoppage; and

24.2.4 Tenant effects such cure within a reasonable time.

## **ARTICLE 25. GENERAL PROVISIONS.**

25.1 **Notices**. All notices or demands shall be in writing and shall be served personally, by overnight courier, or by express or certified mail. Service shall be deemed conclusively made at the time of service if personally served; the next business day if sent by overnight courier and receipt is confirmed by the signature of an agent or employee of the party served; the next business day after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by express mail; and three (3) days after deposit thereof in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail.

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25.1.1 Any notice to Landlord shall be given to:

City of Sunnyvale  
456 West Olive Avenue

Sunnyvale, California 94086  
Attn: Director of Community Development

25.1.2 Any notice to Tenant shall be given to:

\_\_\_\_\_ Housing Partners, L.P.  
18201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attn: Frank Cardone

Any party may, by virtue of written notice in compliance with this Section 25.1, alter or change the address or the identity of the person to whom any notice, or copy thereof, is to be sent.

25.2 **Certificates**. Landlord or Tenant, as the case may be, shall execute, acknowledge and deliver to the other, promptly upon request, a Certificate of Landlord or Tenant, as the case may be, certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect, as modified, and stating the date of each instrument so modifying the Lease), (b) the date, if any, through which the Rent, if any, has been paid, (c) whether there are then existing any offsets or defenses against the enforcement of any term hereof on the part of Tenant to be performed or complied with (and, if so, specifying the same), and (d) whether any default exists hereunder and, if any such default exists, specifying the nature and period of existence thereof and what action Landlord or Tenant, as the case may be, is taking or proposes to take with respect thereto and whether notice thereof has been given to the party in default. Any Certificate may be relied upon by any prospective purchaser, transferee, mortgagee or trustee under a deed of trust of the fee or leasehold estate in the Property or any part thereof or of Landlord's or Tenant's interest under this Lease. Tenant will also deliver to Landlord, promptly upon request, such information with respect to the Property or any part thereof as from time to time may reasonably be requested.

25.3 **No Merger of Title**. There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate in the Property or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly: (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate, and (b) any other estate in the Property and the Improvements or any part thereof or any interest in such estate, and no such merger shall occur unless and until all persons, corporations, firms and other entities, including any leasehold mortgagee or leasehold mortgagees, having any interest (including a security interest) in (i) this Lease or the leasehold estate created by this Lease, and (ii) any other estate in the Property or the

## DDA EXHIBIT E

Improvements or any part thereof shall join in a written instrument effecting such merger and shall duly record the same.

25.4 **Utility Services.** Tenant shall pay or cause to be paid all charges for all public or private utility services and all sprinkler systems and protective services at any time rendered to or in connection with the Property or the Improvements, or any part thereof, and shall comply with all contracts existing on the date hereof or subsequently executed by Tenant relating to any such services, and will do all other things required for the maintenance and continuance of all such services.

25.5 **Quiet Enjoyment.** Tenant, upon paying the Rent, if any, and other charges herein provided for and upon performing and complying with all covenants, agreements, terms and conditions of this Lease to be performed or complied with by it, shall lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation by Landlord, or any person or persons claiming through Landlord.

25.6 **No Claims Against Landlord.** Nothing contained in this Lease shall constitute any consent or request by Landlord, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord or its interest in the Property in respect thereof.

25.7 **No Waiver by Landlord.** To the extent permitted by applicable law, no failure by Landlord to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a default under this Lease, and no acceptance of rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. No waiver of any default shall affect or alter this Lease, which shall continue in full force and effect, or the rights of Landlord with respect to any other then existing or subsequent default.

25.8 **Holding Over.** In the event Tenant shall hold over or remain in possession of the Property or the Improvements with the consent of Landlord after the expiration of the Term, such holding over or continued possession shall create a tenancy for month to month only, upon the same terms and conditions as are herein set forth so far as the same are applicable.

25.9 **No Partnership.** Anything contained herein to the contrary notwithstanding, Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or member of a joint enterprise with Tenant hereunder.

25.10 **Remedies Cumulative.** The various rights, options, elections and remedies of Landlord and Tenant, respectively, contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any

right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

25.11 **Attorney's Fees**. In the event of a dispute between the parties arising out of or in connection with this Lease, whether or not such dispute results in arbitration or litigation, the prevailing party (whether resulting from settlement before or after arbitration or litigation is commenced) shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit incurred by the prevailing party.

25.12 **Time Is Of The Essence**. Time is of the essence of this Lease and all of the terms, provisions, covenants and conditions hereof.

25.13 **Survival of Representations, Warranties and Covenants**. The respective representations, warranties and covenants contained herein shall survive the Commencement Date and continue throughout the Term.

25.14 **Construction of Agreement**. This Lease shall be construed in accordance with the substantive laws of the State of California, without regard to the choice of law rules thereof. The rule of construction that a document be construed strictly against its drafter shall have no application to this Lease.

25.15 **Severability**. If one or more of the provisions of this Lease shall be held to be illegal or otherwise void or invalid, the remainder of this Lease shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted under applicable laws and regulations.

25.16 **Entire Agreement: Modification**. This Lease contains the entire agreement of the parties with respect to the matters discussed herein. This Lease may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extensions or discharge is sought.

25.17 **Binding Effect and Benefits**. This Lease shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns. Except as otherwise set forth herein, nothing in this Lease, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Lease.

25.18 **Further Assurances**. Each party hereto will promptly execute and deliver without further consideration such additional agreement, assignments, endorsements and other documents as the other party hereto may reasonably request to carry out the purposes of this Lease.

25.19 **Counterparts**. This Lease may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease.

## DDA EXHIBIT E

25.20 **Number and Gender.** Whenever the singular number is used in this Lease and required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

25.21 **Incorporation by Reference.** Every Exhibit attached to this Lease and referred to herein is hereby incorporated by reference.

25.22 **Tax Credit Partner Rights.** Notwithstanding anything to the contrary contained in this Lease, Landlord agrees to extend to Tax Credit Partner rights equal to those of the Mortgagee set forth in Sections 18.2 through 18.4, inclusive, 18.8 and 20.1 provided, however, any and all notices to be given by Landlord under said Sections shall be given concurrently with the giving of such notice to Tenant and the cure period, if any, for Tax Credit Partner associated with each such notice shall commence to run from the effective date of such notice. Additionally, Landlord hereby agrees that Tax Credit Partner shall be entitled to request and receive the Certificate of Landlord set forth in Section 25.2.

*[remainder of page intentionally left blank]*

*[signature page next page]*

**IN WITNESS WHEREOF**, the undersigned have executed this Lease as of the date first above written.

**LANDLORD:**

**CITY OF SUNNYVALE,**  
a municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
\_\_\_\_\_

*[signatures continue on next page]*



**PARTNERSHIP:**

\_\_\_\_\_ **HOUSING PARTNERS, L.P.**,  
a California limited partnership

By: Related/\_\_\_\_\_ Development Co., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Frank Cardone, President

## DDA EXHIBIT E

**EXHIBIT A (TO EXHIBIT E OF THE DDA)****LEGAL DESCRIPTION OF THE PROPERTY**

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA DESCRIBED AS FOLLOWS:

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

General Description and APNs of the Property

The Property includes the following parcels in the City of Sunnyvale, within Santa Clara County, California:

Situs Address(es)	Assessor's Parcel Number (APN)
388 Charles St., Sunnyvale CA 94086	165-130-74
396 Charles St., Sunnyvale CA 94086	165-130-46
397 S. Mathilda Ave., Sunnyvale CA 94086	165-130-68
402 Charles St., Sunnyvale CA 94086	165-130-45
406 Charles St. and 407 S. Mathilda Ave., Sunnyvale CA 94086	165-130-73
403 S. Mathilda Ave. Sunnyvale CA 94086	165-130-69

**EXHIBIT B (TO EXHIBIT E OF THE DDA)**  
**PLAN FOR SOCIAL SERVICES**

The Social Services to be provided to the residents of Sunnyvale Block 15 Apartments shall consist of the following two components:

[Insert prior to lease execution]

## DDA EXHIBIT F

CITY SUBORDINATE LOAN NOTE  
Sunnyvale - Housing Project

\$[12,500,000]

As of \_\_\_\_\_, 201\_\_  
Sunnyvale, California**RECITALS**

A. WHEREAS, \_\_\_\_\_ HOUSING PARTNERS, L.P., a California limited partnership ("Borrower"), and the CITY OF SUNNYVALE, a municipal corporation ("Lender"), entered into that certain Disposition and Development Agreement dated as of \_\_\_\_\_, 2018 (the "DDA"); and

B. WHEREAS, pursuant to the DDA, (i) Lender, as ground lessor, and Borrower, as ground lessee, have entered into that certain Ground Lease dated as of \_\_\_\_\_, 201\_\_ (the "Ground Lease"), and (ii) Lender has made the "City Subordinate Loan" to Borrower to finance up to \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in Project Costs.

NOW, THEREFORE, FOR VALUE RECEIVED, Borrower promises to pay to the order of Lender, at 456 West Olive Avenue, Sunnyvale, California 94086, or at such other place as Lender may from time to time designate in writing, (a) the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), with interest from the Recordation Date until paid at the simple rate of [not more than] three percent (3%) per annum, and (b) all fees, costs and expenses payable hereunder.

1. **Definitions; Interpretation; Accounting.**

1.1 **Definitions.** Initially capitalized words and terms used in this Note without definition shall have the meanings ascribed thereto in the DDA or the following definitions, unless the context or use clearly requires otherwise:

**"Annual Operating Expenses"** means, for the applicable calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles:

1. Property taxes and assessments imposed on the Project;
2. Debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project,) on loans

## DDA EXHIBIT F

associated with the Project and approved by the Lender in the Final Project Budget or otherwise;

3. Property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry, and pursuant to a management contract reasonably approved by the Lender;
4. Premiums for property damage and liability insurance;
5. Any annual license or fees required for operation of the Project;
6. Security services;
7. Advertising and marketing costs;
8. Cash deposited into reserves for capital replacements of the Project in an amount to be approved by the Lender as part of the Final Project Budget, as the same may increase during the Term with the approval of the Lender; provided, however, no approval of Lender shall be required to the extent of any cash deposited into reserves for capital replacements in compliance with the requirements of Borrower's investor limited partners or lenders;
9. Cash deposited into an operating reserve in an amount to be approved by the Lender as part of the Final Project Budget, as the same may be increased during the Term with the approval of the Lender, and annual operating budgets, but with the operating reserve capped at six (6) months of gross rent from the Project (as such rent may vary from time to time); provided, however, no approval of Lender shall be required to the extent of any cash deposited into an operating reserve in compliance with the requirements of Borrower's investor limited partners or lenders;
10. Asset management fee and a partnership management fee, in the amount approved by the Lender as part of the Final Project Budget;
11. Utility services not paid for directly by tenants, including, without limitation, water, sewer, and trash collection;
12. Maintenance and repair, including pest control, landscaping, grounds maintenance, painting and decorating, cleaning, common systems repair, janitorial supplies and services,
13. Social services fees and expenses;
14. Annual audit fees, inspection fees, or monitoring fees required in relation to any Financing Plan;

## DDA EXHIBIT F

15. Extraordinary operating costs specifically approved by the Lender in its reasonable discretion;
16. Payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves,
17. Reasonable accounting fees and legal fees; and
18. Other ordinary and reasonable operating expenses approved by the Lender in its reasonable discretion and not listed above.

Annual Operating Expenses shall exclude the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

**“City Subordinate Loan Deed of Trust”** means the Deed of Trust of even date herewith by which this Note is secured.

**“Base Rate”** means a fluctuating interest rate per annum as shall be in effect from time to time, which rate at all times shall be equal to the rate of interest announced publicly by Bank of America, N.A., from time to time as its base rate.

**“Capital Improvements”** means all work and improvements with respect to the Property for which costs and expenses may be capitalized in accordance with GAAP.

**“Commencement Date”** shall mean the earlier of (a) when the Construction has been completed as evidenced by recordation in the Official Records of the Notice of Completion therefor, or (b) when the Improvements have been placed in service.

**“Construction”** means the construction to be performed by Borrower pursuant to Article 7 of the Ground Lease.

**“Debt Service”** means scheduled debt service on the Senior Loan.

**“Director of Community Development”** means the Director of Community Development of Lender or its designee.

**“Fiscal Year”** means the fiscal year of Borrower, which is the calendar year.

**“GAAP”** has the meaning set forth in Section 1.3 of this Note.

**“Gross Revenue”** with respect to a particular calendar year, means all revenue, income, receipts, and other consideration actually received from operation and leasing of the Project, including but not limited to:

## DDA EXHIBIT F

1. All rents, fees and charges paid by tenants, payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income;
2. The proceeds of business interruption or similar insurance;
3. Any payment received in consideration for the leasing or other use of any portion of the Project;
4. Subject to the rights of institutional lenders, the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project (or applied toward the cost of recovering such proceeds);
5. Subject to the rights of Institutional Lenders, condemnation awards for a taking of part or all of the Project for a temporary period; and

Gross Revenue shall exclude tenants' security deposits, loan proceeds, capital contributions or other similar advances.

**“Ground Lease”** has the meaning set forth in Recital B above.

**“Improvements”** means the improvements to be made to the Property by Borrower in accordance with the DDA.

**“Net Operating Income”** means, for any calendar year, the amount, if any, by which Gross Revenue exceeds Annual Operating Expenses which Tenant paid during such period.

**“Official Records”** means the Official Records of the County of Santa Clara, California.

**“Property”** has the meaning ascribed thereto in the City Subordinate Loan Deed of Trust.

**“Recordation Date”** means the date on which the City Subordinate Loan Deed of Trust records in the Official Records.

**“Security Deposits”** means all security deposits collected from tenants of the Property.

**“Senior Loan”** means that certain construction loan made to Borrower by \_\_\_\_\_, for the Construction, and take-out financing therefor to be provided by \_\_\_\_\_ or such other lender as may be approved by the Director of Community Development.

**“Senior Loan Documents”** means the documents evidencing and securing the Senior Loan.

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1.2 **Interpretation.** In this Note, (a) the singular includes the plural and the plural the singular; (b) words and terms which include a number of constituent parts, things or elements, unless otherwise specified, shall be construed as referring separately to each constituent part, thing or element thereof, as well as to all of such constituent parts, things or elements as a whole; (c) words importing any gender include the other genders; (d) references to statutes are to be construed as including all rules and regulations adopted pursuant to the statute referred to and all statutory provisions consolidating, amending or replacing the statute referred to; (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms; (f) the words “*hereto*” or “*herein*” or “*hereof*” or “*hereunder*” or words of similar import refer to this Note in its entirety; (g) the words “*include*” or “*including*” or words of similar import, unless otherwise specified herein, shall be deemed to be followed by the words “*without limitation*”; (h) all references to Articles and Sections, unless otherwise specified, are to the Articles and Sections of this Note; and (i) headings of Articles and numberings and headings of Sections and paragraphs are inserted as a matter of convenience and shall not affect the construction of this Note.

1.3 **Accounting Terms and Determinations.** Unless otherwise specified herein, (a) all accounting terms used herein shall be interpreted, (b) all accounting determinations hereunder shall be made, and (c) all books, records and financial statements required to be delivered hereunder shall be prepared in accordance with generally accounting principles as in effect from time to time, consistently applied (“GAAP”), except for changes approved by Lender.

2. **Disposition and Development Agreement.** The principal sums hereunder are being loaned by Lender to Borrower in accordance with and pursuant to the DDA. The terms of the DDA are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein.

3. **Ground Lease.** The principal sums hereunder are being loaned by Lender to Borrower to finance development of the Improvements on the Ground Lease premises.

4. **Financial Reporting Covenants.** Borrower will permit the representatives of Lender at any time or from time to time, upon three (3) business days’ notice and during normal business hours, to inspect and copy all of Borrower’s books and records relating to the Property. Borrower shall furnish or cause to be furnished to Lender the following:

(a) **Annual Statements.** As soon as available, but in no event later than one hundred eighty (180) days after the close of each Fiscal Year commencing after the completion of construction as evidenced by a certificate of occupancy, financial statements of Borrower, including a profit-and-loss statement, reconciliation of capital accounts and a consolidated statement of changes in financial position of Borrower as



## DDA EXHIBIT F

at the close of and for such Fiscal Year, all in reasonable detail, certified by a general partner of Borrower;

(b) **Annual Operating Statements**. As soon as available but in no event later than one hundred eighty (180) days after the close of each Fiscal Year, an "Annual Operating Statement" showing Gross Income, Annual Operating Expenses, Debt Service and any other amounts taken into consideration in computing Net Operating Income, if any, for the subject Fiscal Year, in a form reasonably satisfactory to the Director of Community Development;

(c) **Tax Returns**. As soon as available, but in no event later than thirty (30) days following the time of filing with the Internal Revenue Service, the federal tax returns of Borrower;

(d) **Audit Reports**. Following receipt thereof, copies of all reports submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower, made by such accountants;

5. **Payment**. Borrower shall make payment on this Note in accordance with the following:

5.1 **Annual Payment**. If, when Borrower delivers each Annual Operating Statement to Lender pursuant to Subdivision 4(b), above, said Annual Operating Statement shows that there was Net Operating Income for the subject Fiscal Year, or part thereof, Borrower shall make payment to Lender on account of this Note in the amount of fifty percent (50%) of such Net Operating Income at the same time that Borrower provides the Annual Operating Statement to the Lender.

5.2 **Mandatory Prepayments**. If, upon completion of construction and when an independent audit of the total cost of the development has been prepared as required by TCAC, the remainder of said total cost of the development less the sum of (a) the actual syndication proceeds of the State (if any) and Federal Low-Income Housing Tax Credits, and (b) the permanent loan proceeds (whether the product of a take-out or sale of the Senior Loan) for the Project is less than \_\_\_ [Fill-in Original Principal Amount of this Note] \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), then Borrower shall, in connection with the closing of the permanent loan, make a prepayment to Lender in the amount of such difference.

6. **Distribution of Profits**. From and after the Commencement Date, Borrower covenants and agrees that, except for fees payable as Annual Operating Expenses pursuant to this Note, Borrower shall not withdraw or distribute to the partners in Borrower any of the rents, issues and/or profits of the Project for any Fiscal Year unless payment is concurrently made to Lender of the percentage of such rents, issues and profits payable to Lender pursuant to Section 5.1.

7. **Maturity**. This Note shall be all due and payable on the date of expiration of the term of the Ground Lease or earlier termination thereof.

## DDA EXHIBIT F

8. **Application of Payments.** Any payments received by Lender pursuant to the terms hereof shall be applied first to sums, other than principal and interest, due Lender pursuant to this Note; next to the payment of all interest accrued to the date of such payment; and the balance, if any, to the payment of principal.

9. **Form of Payment.** All amounts due hereunder are payable in immediately available funds and lawful monies of the United States of America.

10. **Dispute Regarding Annual Operating Statement.** If Lender disputes any Annual Operating Statement, Lender shall notify Borrower of such dispute and the parties shall cause their representatives to meet and confer concerning the dispute and to use all reasonable efforts to reach a mutually acceptable resolution of the matter in question within thirty (30) days after Lender's notice of such dispute. If the parties are unable to achieve a mutually acceptable resolution within such 30-day period, then, within twenty (20) days after the expiration of such period, Borrower shall appoint a national firm of certified public accountants to review the dispute and to make a determination as to the matter in question within thirty (30) days after such appointment. Such firm's determination shall be final and binding upon the parties. Such firm shall have full access to the books, records and accounts of the Borrower and the Project.

10.1 **Underpayment.** If any audit by Lender reports an underpayment by Borrower on this Note, Borrower shall pay the amount of any such underpayment, together with the late charge specified in Section 14 of this Note, to Lender within five (5) days after notice thereof to Borrower or, in the event of a dispute, after notice to Borrower of the resolution of such dispute by the independent firm of certified public accountants, as the case may be, and, if such underpayment amounts to more than three percent (3%) of the disputed payment for the period audited, then, notwithstanding anything to the contrary in this Section, Borrower shall pay to Lender, within five (5) days after demand, Lender's reasonable costs and expenses in conducting such audit and exercising its rights under Section 10 of this Note (including a reasonable charge for the services of any employees of Lender conducting such audit and exercising its rights under this Section).

10.2 **Overpayment.** If any audit by Lender reports an overpayment by Borrower on this Note, Lender shall promptly reimburse the amount of any such overpayment to Borrower within five (5) days after notice thereof to Lender.

11. **Prepayment.** At any time, Borrower may prepay in whole or in part, without penalty, the outstanding principal balance under this Note, together with all accrued and unpaid interest, fees, costs and expenses payable hereunder.

12. **Security.** This Note and all amounts payable hereunder are secured by the City Subordinate Loan Deed of Trust. The terms of the City Subordinate Loan Deed of Trust are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. A default under any of the provisions of the City Subordinate Loan Deed of Trust shall be a default hereunder, and a default hereunder shall be a default under the City Subordinate Loan Deed of Trust.

## DDA EXHIBIT F

13. **Late Payment.** If any annual payment of accrued interest and principal is not received by the Lender within ten (10) calendar days after the installment is due, Borrower shall pay to the Lender a late charge of five percent (5%) of such payment, such late charge to be immediately due and payable without demand by Lender.

14. **Acceleration and Other Remedies.** If:

(a) any payment under this Note is not made when due and Borrower fails to cure said default within fifteen (15) days after notice from Lender;

(b) Borrower defaults under any other provision of this Note and Borrower shall have failed to cure said default within thirty (30) days after notice from Lender, provided, however, if cure of such default reasonably requires more than thirty (30) days, then, provided that Borrower commences to cure within such thirty (30)-day period and thereafter diligently and continuously prosecutes the cure to completion, Borrower shall not be in default during the cure period;

(c) there is an event or occurrence which, pursuant to the City Subordinate Loan Deed of Trust, gives rise to acceleration of the indebtedness evidenced by this Note,

(d) there is a default under the Senior Loan;

the entire principal amount outstanding hereunder and accrued interest thereon shall at once become due and payable, at the option of Lender.

15. **Remedies.** Upon the occurrence of an event of default and the expiration of any cure period therefor as provided in this Note without such event of default having been cured, then, at the option of Lender, the entire balance of principal together with all accrued interest thereon shall, without demand or notice, but subject to the non-recourse provisions of Section 21 of this Note, immediately become due and payable. Upon the occurrence of an event of default (and so long as such event of default shall continue), the entire balance of principal together with all accrued interest shall bear interest at the lesser of (a) the maximum rate permitted by law, and (b) the Base Rate plus three percent (3%) per annum. No delay or omission on the part of Lender in exercising any right under this Note or under the City Subordinate Loan Deed of Trust shall operate as a waiver of such right.

16. **Third Party Cure Rights.** Notwithstanding anything to the contrary contained in this Note or the City Subordinate Loan Deed of Trust (collectively, the "Subordinate Loan Documents"), prior to declaring any default or taking any remedy permitted under the Subordinate Loan Documents or applicable law based upon an alleged default under the Subordinate Loan Documents, \_\_\_\_\_, a \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_ (collectively, with their successors and assigns, "\_\_\_\_\_") shall have a period of not less than (a) fifteen (15) days to cure such alleged default if of a monetary nature, and (b) thirty (30) days to cure such alleged default if of a nonmonetary nature; provided, however, if in order to cure such a default

\_\_\_\_\_ reasonably determines that it must remove the general partner of the Borrower, \_\_\_\_\_ shall so notify the Lender and so long as \_\_\_\_\_ is diligently and continuously attempting to so remove such general partner, \_\_\_\_\_ shall have until the date thirty (30) days after the effective date of the removal of the general partner or general partners to cure such default.

17. **Waiver**. Except as otherwise expressly provided herein, Borrower hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Note, and expressly agrees that, without in any way affecting the liability of Borrower hereunder, Lender may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this Note. Borrower further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this Note, or on any deed of trust, security agreement, lease assignment, guaranty or other agreement now or hereafter securing this Note.

18. **Attorneys' Fees**. If this Note is not paid when due or if any event of default occurs, Borrower promises to pay all costs of enforcement and collection, including but not limited to, reasonable attorney's fees, whether or not any action or proceeding is brought to enforce the provisions hereof.

19. **Severability**. Every provision of this Note is intended to be severable. In the event any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

20. **Interest Rate Limitation**. Lender and Borrower stipulate and agree that none of the terms and provisions contained herein or in any of the loan instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if any holder of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of such holder, be credited to the payment of the sums due hereunder or returned to Borrower.

21. **Non-Recourse**. Notwithstanding anything to the contrary contained in this Note or in the City Subordinate Loan Deed of Trust referred to in this Note, but without in any manner affecting the validity of this Note or the lien or charge of the City Subordinate Loan Deed of Trust, in the event of any default under the terms of this Note or the City Subordinate Loan Deed of Trust, the sole recourse of the Lender for any and all such defaults shall be by judicial foreclosure or by the exercise of the trustee's power of sale, and the undersigned, and the partners of the undersigned, shall not be

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personally liable for the payment of this Note or for any other default under the City Subordinate Loan Deed of Trust or for the payment of any deficiency established after judicial foreclosure or trustee's sale under the City Subordinate Loan Deed of Trust. Nothing contained in the foregoing limitation of liability shall: (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Lender thereunder; or (b) be deemed in any way to impair the right of the Lender to assert the unpaid principal amount of the Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of the Borrower's obligations under the City Subordinate Loan Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the Lender under any provisions of the Ground Lease, or liability for: (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the City Subordinate Loan Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the City Subordinate Loan Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

22. **Headings**. Headings at the beginning of each numbered Section of this Note are intended solely for convenience and are not to be deemed or construed to be a part of this Note.

23. **Giving of Notice**. Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by mailing it by first class mail to Borrower at the following address:

\_\_\_\_\_ Housing Partners, L.P.  
18201 Von Karman Ave.  
Suite 900  
Irvine, CA 92612  
Attn: Frank Cardone

or at a different address if Borrower gives Lender a notice of that different address.

Any notice that must be given to Lender under this Note will be given by mailing it by first class mail to Lender at the following address:

456 West Olive Avenue  
Sunnyvale, California 94086  
Attention: Director of Community Development

or at a different address if Lender gives Borrower a notice of that different address.

25. **Choice of Law.** This Note shall be governed by and construed and enforced in accordance with the laws of the State of California.

*[remainder of page intentionally left blank]*

*[signature page next page]*

**BORROWER:**

\_\_\_\_\_ **HOUSING PARTNERS, L.P.**,  
a California limited partnership

By: Related/\_\_\_\_\_ Development Co., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Frank Cardone, President

**DDA EXHIBIT G**

**SUBORDINATED DEED OF TRUST  
WITH ASSIGNMENT OF RENTS**

**RECORDING REQUESTED BY:**

CITY OF SUNNYVALE

**AND WHEN RECORDED RETURN TO:**

CITY OF SUNNYVALE  
456 West Olive Avenue  
Sunnyvale, California 94086  
Attention: Director of Community Development

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Free Recording Requested  
Government Code § 6103]

**SUBORDINATED DEED OF TRUST  
WITH ASSIGNMENT OF RENTS**

**SUNNYVALE BLOCK 15 - HOUSING PROJECT  
CITY SUBORDINATE LOAN DEED OF TRUST**

This DEED OF TRUST is made as of \_\_\_\_\_, 201\_\_, by and between \_\_\_\_\_ **HOUSING PARTNERS, L.P.**, a California limited partnership ("Trustor"), \_\_\_\_\_ **TITLE COMPANY**, a California corporation ("Trustee"), and **CITY OF SUNNYVALE**, a municipal corporation ("Beneficiary").

Trustor grants, transfers and assigns to Trustee in trust, upon the trusts, covenants, conditions and agreements and for the uses and purposes hereinafter contained, with power of sale, and right of entry and possession, all of its title and interest in that real property (the "Property") in the City of Sunnyvale, County of Santa Clara, State of California, described in Exhibit A attached hereto and incorporated herein by this reference.

Together with Beneficiary's interest in all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Property; and

Together with the rents, issues and profits thereof; and together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment,



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steam and hot-water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantles, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty; and

Together with all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein; and

Together with all plans, drawings, specifications, and articles of personal property now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the completion and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner.

To have and to hold the property hereinbefore described (including the Property and all appurtenances), all such property being referred to collectively herein as the "Property," to Trustee, its successors and assigns forever.

**FOR THE PURPOSE** of securing (1) payment of indebtedness of Trustor to the Beneficiary in the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "City Subordinate Loan"), evidenced by a City Subordinate Loan Note of even date herewith between Trustor and Beneficiary (the "City Subordinate Loan Note"), together with all sums due thereunder including interest and other charges; and (2) the performance of each agreement of Trustor in this Deed of Trust and the City Subordinate Loan Note. The City Subordinate Loan Note and all of its terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances of the City Subordinate Loan evidenced by any note reciting that it is secured hereby.

**AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:**

1. That it will pay the City Subordinate Loan Note at the time and in the manner provided therein;

2. That it will not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed, namely, as affordable rental housing;

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3. That the City Subordinate Loan Note is incorporated herein and made a part of this Deed of Trust. Upon default under the City Subordinate Loan Note or this Deed of Trust, Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;

4. That all rents, profits and income from the Property covered by this Deed of Trust are hereby assigned to Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder, to collect such rents, profits and income;

5. That upon default hereunder, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Property described herein and operate same and collect the rents, profits and income therefrom;

6. That Trustor will keep the improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties and contingencies as may be required in writing from time to time by Beneficiary, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies, in the amount of the replacement value of the improvements. Such policies shall be endorsed with a standard mortgage clause with loss payable to Beneficiary subordinate to the rights and interest of the beneficiary of the Senior Loan Deed of Trust described in paragraph 31, below) and certificates thereof together with copies of original policies shall be deposited with Beneficiary;

7. To pay, at least ten (10) days before delinquency, any taxes and assessments affecting said Property 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;

8. To keep said Property in good condition and repair, not to remove or demolish any buildings thereon; to complete or restore promptly and in 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 (unless contested in good faith if Trustor provides security satisfactory to Beneficiary that any amounts found to be due will be paid and no sale of the Property or other impairment of the security hereunder will occur); 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 and/or covenants, conditions and/or restrictions affecting said Property; not to permit or suffer any alteration of or addition to the buildings or improvements hereafter constructed in or upon said Property without the consent of Beneficiary;

9. 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

## DDA EXHIBIT G

and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

10. Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or 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 in 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, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may 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, may pay necessary expenses, employ counsel, and pay counsel's reasonable fees;

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by Beneficiary shall be added to the principal sum secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the City Subordinate Loan Note;

13. That the City Subordinate Loan advanced hereunder is to be used in the development of the Property; and upon the failure of Trustor to keep and perform such covenants, the principal sum and all arrears of interest, and other charges provided for in the City Subordinate Loan Note shall, at the option of Beneficiary, become due and payable, anything contained herein to the contrary notwithstanding;

14. Trustor further covenants that it will not voluntarily create, suffer or permit to be created against the Property, subject to this Deed of Trust, any lien or liens except as authorized by Beneficiary and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on the Property;

15. That any and all improvements made or about to be made upon the Property, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of Beneficiary a charge not to exceed that permitted by law for providing a statement regarding the obligation secured by this Deed of Trust as

provided by Section 2954, Article 2, Chapter 2, Title 14, Division 3 of the California Civil Code.

**IT IS MUTUALLY AGREED THAT:**

17. Subject to the additional cure rights in Section 17 of the City Subordinate Loan Note, if the construction of any improvements as herein referred to shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than events of Force Majeure pursuant to Section 36 hereof, Beneficiary, after due notice to Trustor or any subsequent owner, is hereby invested with full and complete authority to enter upon the Property, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the erection and completion of said building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of Trustor, and to pay and discharge all debts, obligations and liabilities incurred thereby. All such sums so advanced by Beneficiary (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this Deed of Trust and shall be due and payable on demand;

18. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, Trustor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to rebuild the Project in a manner that provides adequate security to Beneficiary for repayment of the City Subordinate Loan or if such proceeds are insufficient then Trustor shall have funded any deficiency, (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the City Subordinate Loan Note or this Deed of Trust. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the City Subordinate Loan in a manner that provides adequate security for repayment of the remaining balance of the City Subordinate Loan. The rights of the Beneficiary to any insurance proceeds or condemnation awards pursuant to this Section 18 are and shall be subject to the prior right to any insurance proceeds or condemnation awards of the beneficiary of the Senior Loan Deed of Trust described in Section 31;

19. Upon default by Trustor in making any payments provided for herein or in the City Subordinate Loan Note secured hereby, and if such default is not made good within ten (10) days after notice from Beneficiary, or if Trustor shall fail to perform any covenant or agreement in this Deed of Trust within thirty (30) days after written demand therefor by Beneficiary (or, in the event that more than thirty (30) days is reasonably required to cure such default, should Trustor fail to promptly commence such cure, and diligently prosecute same to completion), Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of

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default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust, the City Subordinate Loan Note and all documents evidencing expenditures secured hereby;

20. 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 the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the City Subordinate Loan Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto;

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee;

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the City Subordinate Loan Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness

## DDA EXHIBIT G

thereof. The grantee in such reconveyance may be described as “the person or persons legally entitled thereto”;

24. The trust created hereby is irrevocable by Trustor;

25. This Deed of Trust 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 include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the City Subordinate Loan Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of each Trustor hereunder are joint and several;

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

27. The undersigned Trustor requests that copies of any notice of default and of any notice of sale hereunder be mailed to it c/o The Related Companies of California, 18201 Von Karman Avenue, Suite 900, Irvine, California 92612 and to Limited Partner at \_\_\_\_\_.

28. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary a detailed statement in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the Property and their use as may be requested by Beneficiary.

29. The full principal amount outstanding plus accrued but unpaid interest thereon, shall be due and payable on the earlier to occur of the following:

(a) sale of the Property as provided further in this paragraph 29; unless in the case of a sale in which the sale proceeds are insufficient to repay in full the City Subordinate Loan, the Beneficiary approves such sale and the purchaser assumes the balance of the City Subordinate Loan in accordance with the terms of the City Subordinate Loan Note.

(b) In order to induce Beneficiary to make the loan evidenced hereby, Trustor agrees that in the event of any transfer of the Property without the prior written consent of Beneficiary (other than a transfer resulting from a foreclosure, or conveyance by deed in lieu of foreclosure, by the holder of the Senior Loan Deed of Trust), Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future

## DDA EXHIBIT G

or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this paragraph 29, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor from any liability thereunder without the prior written consent of Beneficiary.

(c) As used herein, “*transfer*” includes the sale, agreement to sell, transfer or conveyance of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property, or the lease of all or substantially all of the Property. “Transfer” shall not include the leasing of individual residential units on the Property or a refinancing of the Property.

(d) The term “Sale” means any transfer, assignment, conveyance or lease (other than to a tenant for occupancy) of the Property and/or the improvements thereon, or any portion thereof. Sale includes a sale in condemnation or under threat thereof. Sale does not include dedications and grants of easements to public and private utility companies of the kind customary in real estate development.

Notwithstanding anything to the contrary contained in this Deed of Trust or in the City Subordinate Loan Note, prior to declaring any default or taking any remedy permitted under this Deed of Trust, the City Subordinate Loan Note or applicable law based upon an alleged default, \_\_\_\_\_ and \_\_\_\_\_ (collectively, “\_\_\_\_\_”) shall have a period of not less than thirty (30) days to cure such alleged default; provided, however, if in order to cure such default \_\_\_\_\_ reasonably believes that it must remove a general partner of Trustor, or all of them, pursuant to that certain Agreement of Limited Partnership dated as of \_\_\_\_\_, 201\_, \_\_\_\_\_ shall so notify Beneficiary and so long as \_\_\_\_\_ is reasonably and diligently attempting to remove the general partner or general partners, \_\_\_\_\_ shall have until the date thirty (30) days after the effective date of the removal of the general partner or general partners to cure such default.

30. Trustor shall permit Beneficiary and its agents or representatives, to inspect the Property at any and all reasonable times, with or without advance notice. Inspections shall be conducted so as not to interfere with the tenants’ use and enjoyment of the Property.

31. It is hereby expressly agreed and acknowledged by Trustor and Beneficiary that this Deed of Trust is a second and subordinate deed of trust, and that the City Subordinate Loan secured hereby, and the City Subordinate Loan Note are subject and subordinate only to the deed of trust securing a loan to Trustor in an approximate original principal amount not to exceed \$\_\_\_\_\_ in which \_\_\_\_\_ (“Senior Lender”) is the Beneficiary, including any loan that refinances the balance of the Senior Loan or an assignment of the Senior Loan (collectively referred to as the “Senior Loan”).

## DDA EXHIBIT G

32. For purposes of this Deed of Trust, "Hazardous Materials" mean and include any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances or toxic substances in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended (42 U.S.C. §9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) and those substances defined as hazardous wastes in §25117 of the California Health and Safety Code or as hazardous substances in §25316 of the California Health and Safety Code or in any regulations promulgated under either such law, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

33. In addition to the general and specific representations, covenants and warranties set forth in the Deed of Trust or otherwise, Trustor represents, covenants and warrants, with respect to Hazardous Materials, as follows:

(a) Neither Trustor nor, to the best knowledge of Trustor, any other person, has ever caused or permitted any Hazardous Materials to be manufactured, placed, held, located or disposed of on, under or at the Property or any part thereof, and neither the Property nor any part thereof, or any property adjacent thereto, has ever been used (whether by the Trustor or, to the best knowledge of the Trustor, by any other person) as a manufacturing site, dump site or storage site (whether permanent or temporary) for any Hazardous Materials;

(b) Trustor hereby agrees to indemnify Beneficiary, its officers, employees, contractors and agents, and hold Beneficiary, its officers, employees, contractors and agents harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Beneficiary, its officers, employees, contractors or agents for, with respect to, or as a direct or indirect result of, the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials on or under the Property or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials from the Property (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials), caused by Trustor.

(c) Trustor has not received any notice of (i) the happening of any event involving the use, spillage, discharge or cleanup of any Hazardous Materials ("Hazardous Discharge") affecting Trustor or the Property or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any



## DDA EXHIBIT G

other environmental, health or safety matter affecting Trustor or the Property ("Environmental Complaint") from any person or entity, including, without limitation, the United States Environmental Protection Agency ("EPA"). If Trustor receives any such notice after the date hereof, then Trustor will give, within seven (7) business days thereafter, oral and written notice of same to Beneficiary.

(d) Without limitation of Beneficiary's rights under this Deed of Trust, Beneficiary shall have the right, but not the obligation, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Materials or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation, the EPA, asserting the existence of any Hazardous Materials or an Environmental Complaint on or pertaining to the Property which, if true, could result in an order, suit or other action against Trustor affecting any part of the Property by any governmental agency or otherwise which, in the sole opinion of Beneficiary, could jeopardize its security under this Deed of Trust. All reasonable costs and expenses incurred by Beneficiary in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Trustor upon demand together with interest thereon at a rate equal to the highest rate payable under the City Subordinate Loan Note secured hereby.

34. The following shall be an Event of Default:

(e) Failure of Trustor to pay, when due, principal and interest and any other sums or charges on the City Subordinate Loan Note, in accordance with the provisions set forth in the City Subordinate Loan Note and subject to any cure rights set forth therein;

(f) A violation of the terms, conditions or covenants of the City Subordinate Loan Note or this Deed of Trust; or

(g) A default under the Senior Loan Deed of Trust to which the lien of this Deed of Trust is subordinate.

35. Subject to the extensions of time set forth in paragraph 36, and subject to the further provisions of this paragraph 35 and of paragraph 37, failure or delay by the Trustor to perform any term or provision of this Deed of Trust constitutes a default under this Deed of Trust. The Trustor must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

(h) The Beneficiary shall give written notice of default to the Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(i) The Trustor shall not be in default so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, provided such cure, correction or remedy is completed within thirty (30) days after receipt of written

## DDA EXHIBIT G

notice (or such additional time as may be deemed by the Beneficiary to be reasonably necessary to correct the cause).

(j) Any failures or delays by the Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the Beneficiary in asserting any of its rights and remedies shall not deprive the Beneficiary 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.

36. Notwithstanding specific provisions of this Deed of Trust, performance 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; acts of God or other deities; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor or supplier; acts of the other party; acts or failure to act of the Beneficiary, or any other public or governmental agency or entity (except that any act or failure to act of Beneficiary shall not excuse performance by Beneficiary); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time the party claiming such extension gives notice to the other party, provided notice by the party claiming such extension is given within thirty (30) days after the commencement of the cause. Times of performance under this Deed of Trust may also be extended in writing by the Beneficiary and Trustor.

37. If a monetary event of default occurs under the terms of the City Subordinate Loan Note or this Deed of Trust, prior to exercising any remedies thereunder Beneficiary shall give Trustor written notice of such default. Trustor shall have a period of fifteen (15) days after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under the City Subordinate Loan Note and this Deed of Trust.

38. If a non-monetary event of default occurs under the terms of the City Subordinate Loan Note or this Deed of Trust, prior to exercising any remedies thereunder, Beneficiary shall give Trustor 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 the Beneficiary under the City Subordinate Loan Note and this Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and 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.

## DDA EXHIBIT G

39. Upon the occurrence of an Event of Default as described in Section 34, Trustor shall be obligated to repay the City Subordinate Loan and, subject to the nonrecourse provision of the City Subordinate Loan Note, Beneficiary may seek to enforce payment of any and all amounts due by Trustor pursuant to the terms of the City Subordinate Loan Note.

40. All expenses (including reasonable attorneys' fees and costs and allowances) incurred in connection with an action to foreclose, or the exercise of any other remedy provided by this Deed of Trust, including the curing of any Event of Default, shall be the responsibility of Trustor.

41. Except as provided in paragraph 31, each successor owner of an interest in the Property, other than through foreclosure, deed in lieu of foreclosure or an owner who takes an interest in the Property after a foreclosure has occurred, shall take its interest subject to this Deed of Trust.

*[remainder of page intentionally left blank]*

*[signature page next page]*

**TRUSTOR:**

\_\_\_\_\_ **HOUSING PARTNERS, L.P.**,  
a California limited partnership

By: Related/ \_\_\_\_\_ Development Co.,  
LLC, a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Frank Cardone, President

## DDA EXHIBIT G

**EXHIBIT A (TO EXHIBIT G OF THE DDA)****LEGAL DESCRIPTION OF THE PROPERTY**

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA DESCRIBED AS FOLLOWS:

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

General Description and APNs of the Property

The Property includes the following parcels in the City of Sunnyvale, within Santa Clara County, California:

Situs Address(es)	Assessor's Parcel Number (APN)
388 Charles St., Sunnyvale CA 94086	165-130-74
396 Charles St., Sunnyvale CA 94086	165-130-46
397 S. Mathilda Ave., Sunnyvale CA 94086	165-130-68
402 Charles St., Sunnyvale CA 94086	165-130-45
406 Charles St. and 407 S. Mathilda Ave., Sunnyvale CA 94086	165-130-73
403 S. Mathilda Ave. Sunnyvale CA 94086	165-130-69

**EXHIBIT H**  
**FORM OF AFFORDABLE HOUSING AGREEMENT**

EXHIBIT I

MEMORANDUM OF UNRECORDED GROUND LEASE  
Sunnyvale Block 15 - Housing Project

RECORDING REQUESTED BY AND

WHEN RECORDED RETURN TO:

City of Sunnyvale.

\_\_\_\_\_  
\_\_\_\_\_

AND MAIL TAX STATEMENTS TO:

\_\_\_\_\_ Housing Partners, L.P.  
18201 Von Karman Ave. Suite 900  
Irvine, California 92612

APN: \_\_\_\_\_

Free Recording Requested]  
[Government Code Section 6103]

MEMORANDUM OF UNRECORDED GROUND LEASE  
Sunnyvale Block 15 - Housing Project

THIS MEMORANDUM OF UNRECORDED LEASE (the "Memorandum"), dated as of \_\_\_\_\_, 201\_, for identification purposes only, is made by and between **CITY OF SUNNYVALE**, a municipal corporation ("Landlord"), and \_\_\_\_\_ **HOUSING PARTNERS, L.P.**, a California limited partnership ("Tenant"), with reference to the following:

RECITALS

**A. WHEREAS**, concurrently herewith, Landlord and Tenant have entered into that certain Ground Lease dated as of \_\_\_\_\_, 201\_ (the "Ground Lease"); and

**B. WHEREAS**, Landlord and Tenant desire to enter into this Memorandum to provide for the Ground Lease and to place it of record.

**NOW, THEREFORE**, Landlord and Tenant hereby agree as follows:

1. Landlord and Tenant are party to that certain unrecorded Ground Lease dated as of \_\_\_\_\_, 201\_, for the premises ("Premises") located in Sunnyvale, California, as more specifically described on Exhibit A attached hereto. The term of the Ground Lease commences on the date on which this Memorandum first records in the

## DDA EXHIBIT I

Official Records of the County of Santa Clara, California, and expires on the earlier of: (a) the \_\_\_\_\_ anniversary of the date on which a "Notice of Completion" records in the Official Records for the "Construction" (as such capitalized term is defined in the Ground Lease), or (b) June 30, 207\_.

2. The rent to be paid by Tenant and all of the rights and obligations of the parties with respect to the Premises are set forth in the Ground Lease.

3. This instrument is a memorandum of the aforesaid Ground Lease and is subject to all of the terms and conditions thereof. This instrument is not intended to alter, amend, expand or restrict the terms and provisions of the aforesaid Ground Lease, or the respective rights or obligations of Landlord and/or Tenant thereunder, all of which are fully incorporated herein by this reference.

4. This Memorandum may be executed in multiple counterparts, each of which shall be deemed an original. All Exhibits attached hereto are incorporated herein by reference.

*[remainder of page intentionally left blank]*

*[signature page next page]*



DDA EXHIBIT I

**IN WITNESS WHEREOF**, the parties have executed this Memorandum as of the day and year first above written.

**LANDLORD:**

**CITY OF SUNNYVALE,**  
a municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_

*[signatures continue on next page]*

DDA EXHIBIT I

**TENANT:**

\_\_\_\_\_ **HOUSING PARTNERS, L.P.**,  
a California limited partnership

By: Related/\_\_\_\_\_ Development Co., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Frank Cardone, President

## DDA EXHIBIT I

**EXHIBIT A (TO EXHIBIT I OF THE DDA)**  
**LEGAL DESCRIPTION OF PROPERTY**

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA DESCRIBED AS FOLLOWS:

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406 Charles St. and 407 S. Mathilda Ave., Sunnyvale CA 94086	165-130-73
403 S. Mathilda Ave. Sunnyvale CA 94086	165-130-69

DDA EXHIBIT I

**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 \_\_\_\_\_, before me, \_\_\_\_\_, 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(ies) 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.

\_\_\_\_\_  
Signature of Notary Public

[SEAL]

DDA EXHIBIT I

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 \_\_\_\_\_, before me,  
\_\_\_\_\_, 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(ies) 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.

\_\_\_\_\_  
Signature of Notary Public

[SEAL]



DDA EXHIBIT I

**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 )  
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COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, 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(ies) 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.

\_\_\_\_\_  
Signature of Notary Public

[SEAL]

**EXHIBIT J**  
**SUBORDINATE COMPLETION GUARANTY**

1. **Obligations Guaranteed.** For valuable consideration, the adequacy and sufficiency of which is acknowledged, the undersigned ("Guarantor") unconditionally guarantees the timely completion of the construction required pursuant to that certain Ground Lease, dated as of \_\_\_\_\_, 201\_, by and between the City of Sunnyvale (the "City") and \_\_\_\_\_ Housing Partners, L.P. ("Partnership") (the "Construction" required by the "Ground Lease"). This Guaranty is in addition to and independent of any other guaranty previously, concurrently or hereafter given to City by Guarantor.

2. **Completion of Improvements By Guarantor.** Guarantor irrevocably and unconditionally agrees that if for any reason (a) the Partnership fails to diligently proceed with or complete the Construction in the manner and within the time limits set forth in the Ground Lease, or (b) the Partnership fails to pay all costs of construction of the Construction, then, in any such event, and upon demand by City, Guarantor shall diligently complete the Construction in accordance with the terms of the Ground Lease and DDA, all at Guarantor's sole cost and expense. In addition, Guarantor shall defend, indemnify and hold City harmless from and against all claims, demands, causes of action, liabilities, losses, costs and expenses (including, without limitation, costs of suit and reasonable attorneys' fees) arising from or in connection with the items described in clauses (a) and (b) above. City hereby agrees that if demand is made hereunder for Guarantor to complete the Construction, Guarantor shall have the right to have any undisbursed portion of the City Subordinate Loan applied to the costs of that Construction.

3. **Remedies of City.** If Guarantor fails to perform its obligations hereunder, then City may, in its sole and absolute discretion and without any obligation to do so, (a) elect to complete the Construction (with such changes to the General Contract and the Plans as City reasonably deems necessary), in which event Guarantor shall, upon demand, reimburse City for all reasonable expenditures made and reasonable costs incurred by City in connection with such completion, together with interest thereon at City's option at either the per annum rate of interest (the "Note Rate") set forth in that certain City Subordinate Loan Note of even date herewith made by the Partnership in favor of City (the "Note") or the default rate of interest provided for in the Note (the "Default Rate"), or (b) from time to time and without first requiring performance on the part of the Partnership or being required to exhaust or proceed against any or all security held by City, enforce performance by Guarantor of any obligation on the part of Guarantor to be performed hereunder, by action at law or in equity or both, in which event City shall be entitled to recover from Guarantor all losses, costs, damages, liabilities and expenses (including reasonable attorneys' fees and costs) sustained or incurred by City as a result of Guarantor's failure to perform its obligations hereunder,



## DDA EXHIBIT J

together with interest thereon at City's option at either the Note Rate or the Default Rate.

4. **Reinstatement.** All of City's rights pursuant to this Guaranty continue with respect to amounts previously paid to City on account of any obligations which are thereafter restored or returned by City, whether in a bankruptcy, reorganization, insolvency, receivership or similar proceeding ("Insolvency Proceeding") of the Partnership or for any other reason, all as though such amounts had not been paid to City, and Guarantor's liability under this Guaranty (and all its terms and provisions) shall be reinstated and revived, notwithstanding any surrender or cancellation of this Guaranty. City, in its sole discretion, may determine whether any amount paid to it must be restored or returned; provided, however, that if City elects to contest any claim for return or restoration, Guarantor agrees to indemnify and hold City harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by City in connection with such contest. If any Insolvency Proceeding is commenced by or against the Partnership or Guarantor, at City's election, Guarantor's obligations under this Guaranty shall immediately and without notice or demand become due and payable, whether or not then otherwise due and payable.

5. **Authorization.** Guarantor authorizes City, without notice and without affecting Guarantor's liability under this Guaranty, from time to time, whether before or after any revocation of this Guaranty, to alter, modify or amend the Plans, the General Contract or any of the relevant terms, covenants and conditions of the Ground Lease.

6. **Waivers.** To the maximum extent permitted by law, Guarantor waives (a) all rights to require City to proceed against the Partnership, or any other guarantor, or proceed against, enforce or exhaust any security for the Construction or to marshal assets or to pursue any other remedy in City's power whatsoever; (b) all defenses arising by reason of any disability or other defense of the Partnership, the cessation for any reason of the liability the Partnership, any defense that any other indemnity, guaranty or security was to be obtained, any claim that City has made Guarantor's obligations more burdensome or more burdensome than the Partnership's obligations; (c) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Guaranty, and all other notices or demands to which Guarantor might otherwise be entitled; (d) all conditions precedent to the effectiveness of this Guaranty; (e) all rights to file a claim in connection with the obligations in an Insolvency Proceeding filed by or against the Partnership; (f) all rights to require City to enforce any of its remedies; (g) All statutes of limitations as a defense to any action or proceeding brought against Guarantor by Lender, to the fullest extent permitted by law; (h) Any defense based on: (i) any legal disability of Borrower, (ii) any release, discharge, modification, impairment or limitation of the liability of Borrower to Lender from any cause, whether consented to by Lender or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, including any proceeding under the Bankruptcy Reform Act of 1978, as amended or recodified (the "Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, the

## DDA EXHIBIT J

"Debtor Relief Law") (any such proceeding referred to as an "Insolvency Proceeding"), or (iii) any rejection or disaffirmance of the Loan, or any part of it, or any security held for it, in any such Insolvency Proceeding;

## **7. Waivers of Subrogation and Other Rights and Defenses.**

7.1 Upon a default by the Partnership, the City in its sole and absolute discretion, without prior notice to or consent of Guarantor, may elect to: (a) terminate the Ground Lease (as allowed by applicable terms) or (b) exercise any other remedy against the Partnership or any security. No such action by the City shall release or limit the liability of Guarantor, who shall remain liable under this Guaranty after the action, even if the effect of the action is to deprive Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from the Partnership for any sums paid or performance rendered to the City, whether contractual or arising by operation of law or otherwise. Guarantor expressly agrees that under no circumstances shall it be deemed to have any right, title, interest or claim in or to any real or personal property to be held by the City or any third party after any foreclosure, transfer in lieu of foreclosure or termination of the Ground Lease.

7.2 Regardless of whether Guarantor may have made any payments to Lender, Guarantor hereby waives: (a) all rights of subrogation, indemnification, contribution, and any other rights to collect reimbursement from Borrower or any other party for any sums paid or performance rendered to City, whether contractual or arising by operation of law (including, without limitation, under any provisions of the Bankruptcy Code, or any successor or similar statutes) or otherwise, (b) all rights to enforce any remedy that City may have against the Partnership, and (c) all rights to participate in any security now or later to be held by City. Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification, and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnification, and contribution Guarantor may have against the Partnership or against any collateral or security, shall be junior and subordinate to any rights the City may have against the Partnership, and to all right, title, and interest the City may have in any such collateral or security. If any amount shall be paid to Guarantor on account of any such subrogation, reimbursement, indemnification, or contribution rights at any time when the Partnership's Construction obligations have not been completed, such amount shall be held in trust for the City and shall forthwith be paid over to the City.

8. **Guarantor to Keep Informed.** Guarantor warrants having established with the Partnership adequate means of obtaining, on an ongoing basis, such information as Guarantor may require concerning all matters bearing on the risk of nonperformance of the Construction. Guarantor assumes sole, continuing responsibility for obtaining such information from sources other than from City. City has no duty to provide any information to Guarantor until City receives Guarantor's written request for specific information in City's possession and the Partnership has authorized City to disclose such information to Guarantor.

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9. **Authorization.** Where the Partnership is a corporation, partnership or other entity, City need not inquire into or verify the powers or authority of those acting or purporting to act on behalf of the Partnership, and this Guaranty shall be enforceable in reliance on the purported exercise of such powers or authority.

10. **Assignments.** Without notice to Guarantor, City may assign its rights with respect to the Construction and this Guaranty, in whole or in part, and may disclose to any prospective or actual purchaser any and all information City has or acquires concerning Guarantor and/or this Guaranty.

11. **Counsel Fees and Costs.** The prevailing party shall be entitled to attorneys' fees (including the allocated costs of City's in-house counsel and legal staff), and all other costs and expenses which it may incur in connection with the enforcement or preservation of its rights under, or defense of, this Guaranty or in connection with any other dispute or proceeding relating to this Guaranty, whether or not incurred in any Insolvency Proceeding, arbitration, litigation or other proceeding.

12. **Integration/Severability/Amendments.** This Guaranty is intended by Guarantor and City as the complete, final expression of their agreement concerning its subject matter. It supersedes all prior understandings or agreements with respect thereto and may be changed only by a writing signed by Guarantor and City. No course of dealing, or parol or extrinsic evidence shall be used to modify or supplement the express terms of this Guaranty. If any provision of this Guaranty is found to be illegal, invalid or unenforceable, such provision shall be enforced to the maximum extent permitted, but if fully unenforceable, such provision shall be severable, and this Guaranty shall be construed as if such provision had never been a part of this Guaranty and the remaining provisions shall continue in full force and effect.

13. **Notice.** Any notice given by any party under this Guaranty shall be effective only upon its receipt by the other party and only if (a) given in writing and (b) personally delivered or sent by United States mail or recognized overnight courier service, postage prepaid, and addressed to City or Guarantor at their respective addresses for notices indicated below. Guarantor and City may change the place to which notices, requests, and other communications are to be sent to them by giving written notice of such change to the other.

14. **California Law.** This Guaranty shall be governed by and construed according to the laws of California, and Guarantor submits to the nonexclusive jurisdiction of the state or federal courts in California.

15. **Subordinate Obligation.** Notwithstanding anything contained in this Guaranty to the contrary, City acknowledges and agrees that this Guaranty in subject and subordinate to a prior and superior guaranty made by Guarantor in favor of \_\_\_\_\_.

16. **Termination of Guaranty.** Notwithstanding anything contained in this Guaranty to the contrary, this Guaranty shall terminate and be of no further force and

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effect upon the issuance of the Certificate of Completion, as defined in the Ground Lease.

*[remainder of page intentionally left blank]*

*[signature page next page]*

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Executed as of \_\_\_\_\_, 201\_. Guarantor acknowledges having received a copy of this Guaranty and having made each waiver contained in this Guaranty with full knowledge of its consequences.

**CITY:**

**GUARANTOR:**

**CITY OF SUNNYVALE,**  
a municipal corporation

**THE RELATED COMPANIES, L.P.,**  
a New York limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for notices sent to Authority:

Address for notices sent to Guarantor:

City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, California 94086  
Attn: Director of Community Development

The Related Companies, L.P.  
60 Columbus Circle, 19th Floor  
New York, New York 10023  
Attn: Jennifer McCool

**APPROVED AS TO FORM:**

\_\_\_\_\_  
  
\_\_\_\_\_

**EXHIBIT K**  
**LIST OF LEASES AND RENTAL AGREEMENTS FOR**  
**CURRENTLY OCCUPIED STRUCTURES**

<b>Address</b>	<b>Household Size</b>	<b>Move-In Date</b>
377 S Mathilda Avenue	1	12/11/2003
406 Charles Street	2	7/30/2008
Note: The actual leases will be provided to Related after DDA execution		