

**FIRST AMENDMENT TO
DISPOSITION AND DEVELOPMENT AGREEMENT
Sonora Court – Housing Project**

This First Amendment to the Disposition and Development Agreement – Sonora Court – Housing Project (“Amendment”) is entered into as of this ____ day of ____, 2021 by and between the City of Sunnyvale, a municipal corporation (the “City”) and Mid-Peninsula Baker Park, Inc., a California nonprofit public benefit corporation (the “Partnership”) (collectively, the “Parties”), with reference to the following:

RECITALS

A. The City owns fee title to the approximately 1.2 acres of improved land located at 1178 Sonora Court (APN# 205-50-013), in the City of Sunnyvale and legally described as Parcel A on Exhibit A attached hereto (the “Property”);

B. The Parties entered into that certain Disposition and Development Agreement dated as of May 19, 2020 (“Agreement”) whereby the Parties agreed to enter into a ground lease for the Property to the Partnership pursuant to the terms of a ground lease attached to and incorporated into the Agreement (“Ground Lease”) within thirty (30) days of the Commercial Tenant vacating the property or June 30, 2021, whichever is earlier;

C. The Partnership submitted a written request to the City on June 22, 2021 to amend the Agreement to allow the Parties to enter into a short term lease until Construction Loan Closing for the Project;

D. The Parties entered into a short term lease for the Property dated as of June 30, 2021 (“Short Term Lease”) until June 30, 2023, and upon closing the construction loan will thereafter enter into the Ground Lease in accordance with the Agreement;

E. The Partnership has been proceeding with the Project and has submitted a substantially complete planning application to obtain land use entitlements for the submission of a tax credit financing application in 2022 in accordance with the Agreement;

F. Due to recent changes in California affordable housing financing programs, the City wishes to extend financing deadlines to ensure the Partnership has sufficient chances to apply for competitive grants, loans, and tax credit financing.

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. Close of Escrow shall occur no later than June 30, 2025.
2. Prior to the Close of Escrow, the Parties shall be permitted to enter into the Short Term Lease for the Property for a term not to exceed two (2) years unless the Parties mutually agree to extend this term on a month-to-month basis for a period of two (2) years.
3. Pursuant to the terms of the Short Term Lease, the Partnership shall pay rent thereunder in the amount of \$1,000.00 per month until the expiration of the Short Term Lease.

4. Section 7.4 of the Agreement is amended to read as follows: 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, (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, an application for the Affordable Housing Sustainable Communities (AHSC) program, so long as the project meets required AHSC application thresholds and is reasonably competitive per the discretion of the Director of Community Development, and (c) timely filing, upon securing all soft project financing required other than tax credits, applications for the next available round for Federal Tax Credits with TCAC, and if the Partnership is applying for 4% Tax Credits, an application to the California Debt Limit Allocation Committee for a tax exempt bond allocation. If efforts to obtain Tax Credits, and if applicable, a bond allocation, are not successful in the first submission made with respect to the Project, the Partnership shall continue to apply for Tax Credits, and if applicable, a bond allocation, for two additional rounds or until successful or such earlier date as this Agreement terminates. 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.

5. The DDA Deadline Date shall be the fifth anniversary of the Agreement.

6. Exhibit B – Schedule of Performance shall be amended and replaced by the Amended DDA Exhibit B – Schedule of Performance attached hereto.

7. In all other respects, the Agreement shall remain unmodified and in full force and effect.

Executed as of the date first written above:

PARTNERSHIP:

MID-PENINSULA BAKER PARK, INC.,
a California nonprofit public benefit corporation

By: _____
Jan M. Lindenthal, Assistant Secretary

[signatures continue on next page]

CITY:

CITY OF SUNNYVALE,
a municipal corporation

By: _____
Kent Steffens, City Manager

APPROVED AS TO FORM:

Rebecca Moon, Senior Assistant City Attorney

AMENDED DDA EXHIBIT B

SCHEDULE OF PERFORMANCE

<u>Task/Event</u>	<u>Time for Performance</u>
1. <u>City Acquisition of the Property.</u> The City shall acquire the Property pursuant to the purchase and sale agreement.	No later than June 30, 2020
2. <u>Community Outreach Plan.</u> The Partnership shall submit a Community Outreach Plan to the City.	Not later than 30 calendar days after the Date of the Agreement
3. <u>CEQA/Land Use Entitlements.</u> 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 180 days after the Effective Date of the DDA, with only one 30-day extension, subject to City Manager approval
4. <u>AHSC Application.</u> Per Section 7.4, Partnership shall attempt to secure AHSC funding.	Partnership shall submit application for AHSC after Land Use Entitlements are received, if the project is competitive.
5. <u>Tax Credit Application.</u> Per Section 7.4, Partnership shall attempt to secure 4% Tax Credit Financing.	Partnership shall submit applications for tax-exempt bonds and Tax Credits after securing an AHSC award, no later than the last available round in 2024.
6. <u>Submission of Final Construction Documents to City.</u> 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).
7. <u>Partnership/Submission of Marketing Plan.</u> 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

8. **Partnership/Project Financing.** Per Not later than 120 calendar days after Section 7.4, Partnership shall submit to the receipt by Partnership from TCAC of a Director of Community Development for reservation of Tax Credits for the Project. approval preliminary commitments for Project Financing.
9. **Final Project Budget.** Per Section 7.3, Not later than ten 10 business days after City and Partnership shall agree on Final 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.
10. **Approval of Final Construction Documents.** Per Section 5.2, Partnership shall receive building permits for the Project. Not later than 5 business days prior to the TCAC Readiness to Proceed deadline (if applicable) or if the TCAC Readiness to Proceed deadline is inapplicable, no later than 180 days after receipt by the Partnership from TCAC of a reservation of Tax Credits for the Project. Partnership should allow minimum 5 months for issuance of the Building Permit.
11. **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 June 30, 2025.
12. **Partnership/Construction of Project.** The Partnership shall commence construction of the Project. Not later than thirty (30) calendar days after the TCAC Readiness to Proceed deadline (if applicable), or if the TCAC Readiness to Proceed deadline is inapplicable, no later than 30 days after the approval of the Final Construction Documents.
13. **Partnership/Construction Completion.** The Partnership shall complete construction of the project. Within 36 months After Construction Loan Close

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.