

RECORDING REQUESTED BY:
CITY OF SUNNYVALE

Record at No Fee per Government Code § 6103

AND WHEN RECORDED MAIL TO:

Housing Division
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 309-50-031
Property Address: 1675 S. Wolfe Road, Sunnyvale

**ASSIGNMENT AND ASSUMPTION AGREEMENT
AND MODIFICATION AGREEMENT
BETWEEN SENIOR HOUSING SOLUTIONS,
SUNNYVALE SENIOR HOMES LLC, AND THE CITY OF SUNNYVALE**

This Assignment and Assumption Agreement and Modification Agreement is dated as of _____, 2014 and is made by and between **Senior Housing Solutions**, a California nonprofit corporation, whose address is 512 Valley Way, Milpitas, California, 95035, hereinafter "Assignor," and **Sunnyvale Senior Homes LLC**, a California limited liability company, whose address is 1400 Parkmoor Avenue, Suite 190, San Jose, CA 95126, hereinafter "Assignee," and the **City of Sunnyvale**, a California charter city and municipal corporation, whose address is P.O. Box 3707, Sunnyvale, California, 94088-3707, hereinafter "City." All three agencies shall be referred to collectively herein as "the Parties". This Assignment and Assumption Agreement and Modification Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

RECITALS

- A. Assignor owns and operates a group home consisting of a single-family home with four (4) bedrooms which Assignor operated as four (4) Single Room Occupancy (SRO)-type units for very low income seniors, located at 1675 S. Wolfe Road in Sunnyvale (the "Property"), as further described in the legal description provided in Exhibit "A".
- B. Assignor acquired the Property in part with the proceeds of a loan from City, consisting of \$75,000 in federal HOME Investments Partnership Program funds (the "HOME Loan"). The HOME Loan is evidenced by a loan agreement dated as of July 2, 1997 (the "HOME Loan Agreement") and a promissory note in the amount of the HOME Loan dated as of July 2, 1997 (the "HOME Note") which is secured by a deed of trust recorded July 3, 1997, as Instrument No. 13764568 in the Official Records of Santa Clara County (the "Official Records") (the "HOME Deed of Trust"). The HOME Loan Note has an interest rate of three percent (3%) for a thirty-year term, with all payments of principal

and interest fully deferred until July 2027. The HOME Loan Agreement, the HOME Note and the HOME Deed of Trust shall hereinafter be referred to collectively, as the "HOME Loan Documents".

- C. In order to complete a rehabilitation of the home, Assignor obtained a second mortgage loan of \$86,000 in federal CDBG loan funds from the City (the "CDBG Loan") on April 3, 2002. The City CDBG Loan has an interest rate of five percent (5%) and is partially deferred, with a minimum monthly interest payment of \$400 payable monthly throughout the loan term of twenty-five (25) years. The CDBG Loan is evidenced by a CDBG Program Loan Agreement dated as of April 3, 2002 (the "CDBG Loan Agreement") and a promissory note in the amount of the CDBG Loan dated as of April, 3, 2002, as amended by an amended dated November 15, 2003 (collectively, the "CDBG Note") which is secured by a deed of trust recorded April 2, 2002, as Instrument No. 16190315 in the Official Records (the "CDBG Deed of Trust"). The CDBG Loan Agreement, the CDBG Note, and the CDBG Deed of Trust will hereinafter be referred to collectively, as the "CDBG Loan Documents").
- D. Assignee is a limited liability company formed by Charities Housing Development Corporation of Santa Clara County, a California nonprofit public benefit corporation ("Charities"), as its sole member and manager, for the sole purpose of owning and managing the Property as an affordable group home for seniors.
- E. Assignor desires to assign all of its interest in the Property to Assignee and Assignee desires to assume Assignor's interest in the property and assume responsibility for the Property. The City hereby approves this assignment and assumption, as it provides an excellent opportunity to preserve affordable for an underserved population in a location near services.
- F. Assignor desires to assign all of its rights, title and interest in and obligations under the HOME Loan Documents to Assignee. Assignee desires to assume all of Assignor's rights, title and interest in and obligations under the HOME Loan Documents.
- G. Assignor desires to assign all of its rights, title and interest in and obligations under the CDBG Loan Documents to Assignee. Assignee desires to assume all of Assignor's rights, title and interest in and obligations under the CDBG Loan Documents.
- H. City and Assignee have agreed to modify the terms of the HOME Loan Documents and the CDBG Loan Documents and to enter into a new HOME/CDBG Regulatory agreement for the Property, consistent with the Amended Klee Regulatory Agreement (to be amended as set forth in the Assignment and Assumption Agreement between the Parties for the property located at 1230 Klee Court and 436 Offenbach Place in Sunnyvale, recorded concurrently herewith). Collectively, the amended loan documents and the new regulatory agreement shall be referred to as the Amended Loan Documents, with the following modifications to the terms of the original HOME and CDBG Loan Documents:

- (i) clarify that the minimum age for occupancy of the Property is sixty-two (62) years old;
- (ii) reflect maximum income and rent limits based on the HOME/CDBG “Very Low” income limit and HOME “Low” rent limit, both of which are based on approximately 50% of area median income as determined by HUD;
- (iii) reduce the interest rate on the CDBG Loan from five percent (5%) to three percent (3%);
- (iv) modify the repayment terms of both loans to: (a) include required annual payments of residual receipts as defined in the Amended HOME and CDBG Notes, consistent with this Agreement; (b) eliminate the fixed monthly payment currently required under the CDBG loan; and (c) defer all principal and interest payments to the end of term, except for the annual residual receipts payment; and
- (v) to extend the term of the CDBG and HOME Notes and Amended Loan Documents to the date that is thirty (30) years from the date on which Assignee takes title to the Property through recording of this Agreement (the “Amended Term”).

NOW THEREFORE, the parties agree as follows, at CLOSING:

1. **Assignment and Assumption of Property and Certain Encumbrances.** Assignor assigns and Assignee assumes the rights, interest and obligations of Assignor set forth in the HOME Loan Documents and the CDBG Loan Documents and Assignee agrees to be bound by each and all of the terms and provisions of the HOME Loan Documents and the CDBG Loan Documents as though the documents had originally been made, executed and delivered by Assignee.
2. **Amendment of Loan Agreements.** City and Assignee mutually agree that the HOME Loan Documents and the CDBG Loan Documents shall be amended and restated to include the modifications described in Recital H above. All other federal and City requirements and obligations associated with the original HOME Loan Documents and CDBG Loan Documents and associated federal regulations shall remain in force.
3. **Interest Rate and Term.** The Interest Rate of the CDBG Loan is changed from five percent (5%) to three percent (3%) and the term of the CDBG and HOME Loans shall be extended to the date that is thirty (30) years from date of the recording of this Assignment and Assumption Agreement and Modification Agreement.
4. **Consent and Release.** The City consents to the assignment to Assignee upon the completion of the Acquisition and at that time hereby releases Assignor from all obligations thereunder.
5. **Restrictions on the Sale/Transfer/Use of Property**

a. It is agreed and understood that the Property was acquired with HOME and CDBG funds and rehabilitated with CDBG funds for use a group home with four (4) SRO-type units for very low income seniors. As such, Assignee agrees to comply with all HOME and CDBG Program laws, rules and regulations, including those that apply to affordable rental housing acquired and rehabilitated with HOME and CDBG funds.

b. Per the terms of the City's agreement, Assignee may not sell, convey, alienate, transfer, lease, dispose of, encumber, assign, discontinue or change the use of the Property or any interest in such Property without first obtaining the written consent of City. The Property must at all times during the Term be used as affordable housing for very low income individuals.

c. If during the CDBG term of restrictions the use of the Property changes to a use which does not provide affordable housing, or if the property is sold, conveyed, alienated, transferred, leased, disposed of, encumbered or assigned without obtaining prior written approval of City, then Assignee shall pay to City the fair market value of the property at the time of sale, less reasonable closing costs incurred by Assignee, and any encumbrances specifically authorized in writing by City.

d. Excess Proceeds. In the event that Assignee transfers the Property at any time during the Amended Term, Assignee shall pay to City any excess proceeds generated by the sale of the property, in compliance with the HOME Program regulations governing use of HOME Program Income. Excess proceeds are defined as 100% of the gross sales proceeds, less seller's customary expenses associated with the sale, and less payment of any debt still owing on the HOME loan. Such payment shall be returned to City for deposit in the City's HOME and CDBG Program Income accounts, as appropriate, or a successor affordable housing program account, if the HOME and/or CDBG Program Income accounts no longer exist.

6. Successors and Assigns. This Agreement applies to, inures to the benefit of, and binds all parties of this Agreement and their respective successors, assigns and legal representatives.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

ASSIGNOR:

SENIOR HOUSING SOLUTIONS,
a California nonprofit public benefit corporation

By: _____
Dolly Sandoval, Chair, Board of Directors

ASSIGNEE:

SUNNYVALE SENIOR HOMES LLC,
a California limited liability company

By: Charities Housing Development Corporation of
Santa Clara County, a California nonprofit public
benefit corporation, its sole member/manager

By: _____
Daniel Wu, Executive Director

CITY:

THE CITY OF SUNNYVALE
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

STATE OF CALIFORNIA)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

EXHIBIT A
Legal Description of Property

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

Lot 2, Tract No. 2186 Lindvale Park Unit No. 1, County of Santa Clare, State of California, Book 100 of Maps, Page 7.

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