

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: 211-33-011

Property Address: 1230 Klee Court and 436 Offenbach Place, 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 duplex with five (5) bedrooms in total which Assignor operated as (5) Single Room Occupancy- (SRO) type units for very low income seniors, located at 1230 Klee Court and 436 Offenbach Place 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 \$170,250 in federal HOME Investments Partnership Program funds (the "HOME Loan"). The HOME Loan is evidenced by a loan agreement dated as of January 14, 1994 (the "HOME Loan Agreement") and a promissory note in the amount of the HOME Loan dated as of January 14, 1994 (the "HOME Note") which is secured by a deed of trust recorded February 24, 1994, as Instrument No. 12371724 in the Official Records of Santa

Clara County (the “Official Records”) (the “HOME Deed of Trust”). The HOME Loan Note carried an interest rate of three percent (3%) for a thirty-year term, with all payments of principal and interest fully deferred until January 2024. 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 partial rehabilitation of the home and refinance several existing senior loans, including two prior CDBG loans from the City and one private bank loan, Assignor obtained a second mortgage loan of \$369,770 in federal CDBG loan funds from the City (the “CDBG Loan”) on July 23, 2010. The City CDBG Loan carries an interest rate of three percent (3%) and is partially deferred, with a minimum interest payment of \$750 due monthly throughout the term, and the balance due at the end of the term. The CDBG Loan is evidenced by a CDBG Program Loan Agreement recorded August 23, 2010, as Instrument No. 20828059 in the Official Records (the “CDBG Loan Agreement”) and a promissory note in the amount of the CDBG Loan dated as of July 23, 2010 (the “CDBG Note”) which is secured by a deed of trust recorded August 23, 2010, as Instrument No. 20828061 in the Official Records (the “CDBG Deed of Trust”), and a CDBG Regulatory Agreement recorded on August 23, 2010, as Instrument No. 20828060 in the Official Records (the “CDBG Regulatory Agreement”). The CDBG Loan Agreement, the CDBG Note, the CDBG Deed of Trust and the CDBG Regulatory Agreement 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 housing 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 has agreed to modify the terms of the HOME Loan Documents and the CDBG Loan Documents to: (i) change the maturity date of the HOME Note and the CDBG Note to thirty (30) years from close of escrow, and (ii) clarify that the minimum age for occupancy of the Property is sixty-two (62 years old); and (iii) (a) modify the repayment terms to 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 (d) 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.

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 and Regulatory Agreements.** City and Assignee mutually agree that the HOME and CDBG Loan Documents and Regulatory Agreement shall be amended and restated to:
 - a. reflect the minimum age for occupants of the Property to be sixty-two (62) years old;
 - b. 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;
 - c. include the revised repayment terms described in Recital H above;
 - d. extend the term of the loans and the regulatory agreement to thirty years from close of escrow on the assignment to Assignee; and
 - e. include references to current CDBG and HOME program regulations and requirements in the amended regulatory agreement.

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. **Term.** The term of the HOME Loan and the CDBG Loan and the term of affordability restrictions under the amended Loan Documents and CDBG Regulatory Agreement shall end thirty (30) years from close of escrow, ending in 2044 (collectively, the “Amended Term”).
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 as a group home with five (5) 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 Amended Term 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 40, as shown upon that certain Map entitled, "Tract No. 3294 Newport Manor", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 20, 1964 in Book 188 of Maps, at Pages 15 and 16.

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