

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Sunnyvale  
Community Development Department  
P.O. Box 3707  
Sunnyvale, CA 94088-3707  
Attn: Housing Officer

No fee for recording pursuant to  
Government Code Section 27383

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APN: 204-06-046

**LOAN AGREEMENT  
CITY OF SUNNYVALE  
HOUSING MITIGATION FUND  
MORSE COURT**

This Loan Agreement (the “Agreement”) is made as of \_\_\_\_\_, 2015 by and between the **City of Sunnyvale**, a municipal corporation (the "Lender"), and **MP Morse Court Associates**, a California limited partnership (the “Borrower”).

**RECITALS**

A. The Borrower intends to rehabilitate that certain real property located at 825 Morse Avenue in the City of Sunnyvale, California as more particularly described in Exhibit A attached hereto (the “Property”), for the purpose of preserving affordable rental housing for Extremely Low, Very Low, and Low-Income households, as such income levels are defined in the Regulatory Agreement (collectively “Lower-Income Households”).

B. The Project will consist of the substantial rehabilitation of five (5) buildings with a total of thirty-five (35) apartment units, which will be occupied by Lower-Income Households, except for one manager’s unit (the “Project”).

C. As a condition of the Loan, the Borrower has agreed to execute a regulatory agreement (the “Regulatory Agreement”) which will regulate the Property for the term of the Loan to ensure that the units are occupied by and affordable to Lower-Income Households.

D. The Lender will oversee the Project to ensure that it conforms to the scope of work, project budget, project timeline, and that it meets all Lender and state housing and building codes.

NOW THEREFORE, in consideration of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, the Borrower and Lender hereby agree as follows:

## ARTICLE 1 LOAN TERMS

1.1 Loan Agreement. The Lender agrees to loan and Borrower agrees to borrow an amount not to exceed One Million Dollars (\$1,000,000) of Sunnyvale Housing Mitigation Funds (the "Loan"), subject to the conditions and terms of this Agreement. The Loan shall be evidenced by a promissory note bearing three percent (3%) interest, with a term of forty (40) years (the "Note") executed by Borrower, with residual receipts payable as provided in the Note, and secured by a deed of trust (the "Deed of Trust") and Regulatory Agreement recorded against the Property. This Agreement, the Note, the Deed of Trust and the Regulatory Agreement shall be collectively referred to as the "Loan Documents".

1.2 Conditions of Funding. The obligation of the Lender to disburse Loan proceeds under this Agreement is subject to the following conditions:

(a) There exists no Default nor any act, failure, omission or condition that would constitute a default under this Agreement;

(b) The Borrower holds title to the Property or is acquiring title simultaneously with the disbursement of the Loan proceeds;

(c) A title insurer reasonable acceptable to the Lender is unconditionally and irrevocably committed to issuing an LP-1- ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the Lender, and containing such endorsements as the Lender may reasonably require.

(d) Escrow instructions ("Escrow Instructions") prepared by the parties shall be delivered to and accepted by the title company. The Escrow Instructions shall be consistent with the terms of this Agreement and shall provide, among other matters, that prior to the Closing Date (as defined below):

(1) This Agreement shall be executed by the Borrower and the Lender and delivered to the Lender;

(2) The Note shall be executed by Borrower and delivered to the Lender;

(3) The Deed of Trust shall be executed by Borrower and recorded in the records of the County of Santa Clara (the "County");

(4) The Regulatory Agreement shall have been executed by Borrower and the Lender and recorded in the records of the County;

(e) Any approval of this Agreement, the Note, the Deed of Trust, or the Regulatory Agreement contemplated by this Agreement that is required under the Loan Documents shall be delivered to the Lender, and any certification required by the Lender

with respect to the procurement of any such approval shall be delivered by Borrower to the Lender.

(f) Borrower shall provide the Lender with a resolution approving and authorizing execution of this Agreement and all documents contemplated hereby and with such other documentation required by the Lender regarding Borrower's status and authority to enter into this transaction.

(g) Borrower shall provide the Lender with certificates of insurance, in form and with insurers admitted in California and acceptable to the Lender, evidencing compliance with the insurance requirements, as provided by the Lender on or prior to the Closing Date, and upon demand by Lender at any time subsequent. If requested by the Lender, Borrower shall also provide complete copies of the required insurance policies and bonds.

(h) The closing contemplated by this Section and the Escrow Instructions shall occur within thirty (30) days of the date of execution of this Agreement, unless the parties agree to a different closing date (the "Closing Date").

(i) The Lender has determined that the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that the Borrower has obtained in connection with the Project, are not less than the amount that is necessary to pay for the Project and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement.

(j) The Lender has received a written draw request from the Borrower, including certification by the Borrower that the condition set forth in Section 1.4(a) is satisfied, setting forth the expenses previously incurred for which reimbursement is requested in connection with the eligible costs of the Project, as set forth in the Project Budget, included herein as Exhibit B. Reimbursement requests shall specify the amount of funds needed, and a copy of the bill or invoice covering the applicable cost. The Borrower shall apply all disbursements for the purpose requested.

(k) Borrower shall provide evidence of matching funds to Lender. The matching funds have been committed by Borrower in the amount of Three Hundred Thousand Dollars (\$333,000). No less than this amount shall be provided by Borrower as matching funds to pay for eligible Project costs consistent with the Project Budget and Scope of Work provided as Exhibits B and C to this Agreement.

1.3 Term of Agreement. The term of this Agreement, shall commence upon the execution of this Agreement and shall be due and payable in full upon the earliest of: (i) forty (40) years from the date of this Note, (ii) the refinancing of the senior loan encumbering the Project, (iii) the sale or other transfer of the Project except as permitted hereunder, or (iv) the transfer of the limited partner interest.

1.4 Use of Funds.

- (a) The Borrower shall use the Loan Funds for the reimbursement of eligible costs incurred by the Project (the "Permitted Use"), as described in the Project Budget, attached hereto as Exhibit B.
- (b) The Borrower agrees to be additionally liable for repayment of any disbursed Loan proceeds not utilized for the Permitted Use.

1.5 Regulatory Agreement. In connection herewith, the Borrower shall execute and record a Regulatory Agreement which shall regulate all units of the Property to ensure that the units are occupied by and affordable to Lower-Income Households for not less than forty (40) years.

1.6 Subordination. The Deed of Trust and/or Regulatory Agreement may be subordinated to deed(s) of trust securing the loans in the amounts set forth in the Project Budget, if any, or to existing deeds of trust securing existing financing (each, a "Senior Loan"), subject to the following conditions:

- (a) Borrower must demonstrate to the Lender's reasonable satisfaction that subordination of the Deed of Trust and/or Regulatory Agreement is necessary to secure adequate financing for the Project, including the operation of the Property as affordable rental housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the Lender, in addition to any other information reasonably required by the Lender, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate financing to ensure the viability of the Project including any project costs not included in the Budget attached hereto as Exhibit B (for the Lender Loan), and adequate financing for the Project would not be available without the proposed subordination or that such loans are existing loans that would not approve the Lender Loan without subordination.

- (b) The subordination agreement(s) must be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the holder of the Senior Loan. To satisfy this requirement, the subordination agreement must provide the Lender with adequate rights to cure any defaults by Borrower, including: (i) providing the Lender or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the Lender with a cure period of at least sixty (60) days to cure any default.

- (c) The subordination(s) described in this section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the Lender.

- (d) No subordination may limit the effect of the Deed of Trust and/or Regulatory Agreement before a foreclosure, nor require consent of the holder of the Senior Loan to exercise of any remedies by the Lender under the Loan Documents.

- (e) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to

execute the approved subordination agreement without the necessity of any further action or approval.

## ARTICLE 2 GENERAL REQUIREMENTS

2.1 Rental Agreement. Leases of units must comply with the following requirements:

- (a) Tenant leases must be for not less than one year unless by mutual agreement between tenant and owner.
- (b) Any termination of tenancy or refusal to renew a lease, with the exception of evictions or non-renewals for non-payment of rent, must be preceded by thirty (30) days written notice specifying the grounds for the action by the owner.
- (c) Leases shall be in writing and may not contain the following prohibitive clauses:
  - (1) Agreement by the tenant to be sued.
  - (2) Statement that owner can confiscate tenant property.
  - (3) Statement excusing owner from legal responsibility.
  - (4) Statement that owner does not have to give notice when instituting a lawsuit.
  - (5) Agreement by the tenant to waive rights to a jury trial.
  - (6) Agreement by the tenant to waive rights to appeal a court decision.
  - (7) Agreement by the tenant to pay attorneys' fees if the tenant wins a court case.
  - (8) Agreement by the tenant to waive rights to civil court proceeding to defend eviction.

2.2 Property Management. During the term of this Agreement, Borrower shall maintain the Property in good repair and in a neat, clean and orderly condition and shall comply with all of the terms and provisions of the City permits issued for the Project. The Borrower must keep and maintain the Property in compliance with all applicable laws and Lender requirements for the duration of this Agreement, and shall not cause or allow the Property to be in violation of any federal, state or local laws, ordinances or regulations.

2.3 Occupancy Procedures. The Borrower shall adopt written tenant selection policies and criteria for the units that:

- (a) Are consistent with the purpose of providing housing for Lower-Income Households;

- (b) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease; and
- (c) Provide for:
  - (i) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
  - (ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

2.4 Security Deposits. Any security deposits collected by the Borrower or Borrower's agent shall be kept separate and apart from all other funds of the Property in a trust account with depository insured by the Federal Deposit Insurance Corporation, or other comparable federal deposit insurance program, and shall be held and disbursed in accordance with California law. The balance of such amount shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon.

2.5 Hazard and Liability Insurance. The Borrower shall at all times cause the Property to be insured against loss by fire, flood, if in a flood zone, and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the Lender. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the Lender. Property insurance policies shall name the Lender as an additional insured, as approved by the Lender. The foregoing shall not limit the obligations of Borrower pursuant to the Deed of Trust.

2.6 Hold Harmless. The Borrower and its successors in interest agree to indemnify, defend, and hold harmless the Lender and its agents, employees, volunteers and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorney's fees) arising from or in connection with the Borrower's construction, management, maintenance or operation of the Project; provided, however, the Borrower's obligations to indemnify and hold harmless shall not apply in the event of the Lender's gross negligence or willful misconduct.

2.7 Annual Report. The Borrower shall file with the Lender an annual report, no later than 120 days following the end of each calendar year. The report shall contain a certification by the Borrower as to such information as the Lender may then require including, but not limited to, the following:

- (a) The substantial physical defects in the Property, including a description of any major repair or maintenance work undertaken or needed in the previous and current fiscal years. Such statement shall describe what steps the Borrower has taken in order to maintain the Property in a safe and sanitary condition in accordance with applicable housing and building codes.
- (b) The occupancy of the Property including:

- (1) the verified income of each current household; and
- (2) the current rent charged each household and whether these rents include utilities.
- (c) A summary of the information received from the recertification of tenants' incomes.
- (d) Other information reasonably required by the Lender, including the fiscal condition of the Borrower showing a financial statement for the previous fiscal year that includes a balance sheet and a profit and loss statement indicating any surplus or deficit in operating accounts; a detailed, itemized listing of income and expenses; the amount of any fiscal reserves and the total amount of Residual Receipts received. Such financial statement shall be prepared in accordance with the requirements of the Lender. The Lender may require that the financial statement be audited at the Borrower's expense by an independent certified public accountant acceptable to the Lender or other person designated by the Lender.

## 2.8 Lender Review and Inspections.

- (a) Upon not less than 2 business days' notice to the Borrower, the Lender may at any time during the term of this Agreement, enter and inspect the physical premises and inspect all accounting records pertaining to the development or operation of the Project. Upon request by the Lender, the Borrower shall notify occupants of upcoming inspections of their units in accordance with state law.
- (b) The Lender may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. Such information shall be promptly provided by the Borrower.
- (c) Borrower shall preserve and make available its records related to receipt and use of Loan proceeds until the expiration of five years from the date of the final disbursement of Loan proceeds, or for such longer period, if any, as is required by law. Borrower shall preserve and make available its records related to occupancy and rent requirements until the expiration of five years from the end of the calendar year to which such records pertain, or for such longer period, if any, as is required by law. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

## 2.9 Restrictions on Sale, Encumbrance, and Other Acts.

- (a) The Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer in any form of the Project or

of any its interest therein, except with the prior written approval of the Lender.

- (b) In the event of a transfer to a wholly-controlled affiliate of MidPen Housing Corporation (“MidPen”), Lender approval rights shall be limited to adjusting terms of the Loan and transferee’s willingness to assume all obligations.
- (c) The unpaid principal balance of the Loan together with any unpaid interest due thereon shall be due and payable in full upon: 1) a refinancing, sale, transfer or other disposition of the Property or any portion thereof, unless such disposition of the Property has been first approved in writing by the Lender, as evidenced by the signature of the City Manager, and approved as to form by the Lender’s Attorney; or 2) the declaration by the Lender of a default as described and subject to the cure periods in Article 3 below.
- (d) The Borrower shall not permit the use of the Property for any purpose other than that permitted by this Agreement without the prior written approval of the Lender.
- (e) The Lender may approve a sale, transfer or conveyance provided that all of the following conditions are met:
  - (1) the Borrower is in compliance with the Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Regulatory Agreement;
  - (2) the transferee agrees to assume all obligations of the Borrower pursuant to the Regulatory Agreement; and
  - (3) any transferee demonstrates to the Lender’s satisfaction that it has the management and financial capacity to own and operate the Property.

2.10 Assignment of Lender Rights. The Lender retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of the Borrower’s duties and obligations hereunder. In addition, the Lender may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

2.11 Environmentally Impaired. In the event that any portion of the Property is determined to be “environmentally impaired” (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an “affected parcel” (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Lender’s or the trustee’s rights and remedies under the Deed of Trust, the Lender may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2)



exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Borrower to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Lender's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) reasonable attorneys' fees, incurred by the Lender in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the Lender upon its demand made at any time following the conclusion of such action.

### ARTICLE 3 DEFAULTS AND REMEDIES

#### 3.1 Event of Default.

Each of the following shall constitute a "Default" and "Event of Default" by Borrower under this Agreement:

(a) Failure to Complete Scope of Work. Failure of Borrower to complete the Project by the date provided in Exhibit C "Scope of Work."

(b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days of receipt of written notice from the Lender that such payment is due pursuant to the Loan Documents.

(c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Lender to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 3, the specific provisions shall control.

- i. Upon the occurrence of an event of default, Lender shall provide to Borrower and Borrower's limited partner written notice of said occurrence, and Borrower and its limited partner shall have thirty (30) days to cure. If, after the time provided in this subparagraph (b), Borrower or its limited partner has not cured the default, or Lender has not waived

its rights under the Note, the entire unpaid balance, together with all other sums then payable under this Note, shall, at the option of Lender, become immediately due and payable upon written notice by Lender to Borrower without further demand. Notice to Borrower and Borrower's limited partner shall be at the addresses specified in the Deed of Trust. Notwithstanding anything to the contrary contained herein, or in any of the Loan Documents, the limited partner of Borrower shall have the right, but not the obligation, to cure the defaults of the Borrower.

(d) Default Under Other Loans. Failure to make any payment or perform any of Borrower's covenants, agreements, or obligations under the documents evidencing and securing the other loans to Borrower in connection with the Project, if any, following expiration of all applicable notice and cure periods.

(e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the Lender, the indebtedness evidenced by the Note.

(f) Assignment; Attachment. Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by Lender, the indebtedness evidenced by the Note.

(g) Suspension; Termination. Borrower shall have voluntarily suspended its business.

(h) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property.

(i) Unauthorized Transfer. Any transfer other than as permitted by Section 2.9.

(j) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or

report submitted to the Lender in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made.

### 3.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Lender or automatically where so specified, relieve the Lender of any obligation to make or continue the Loan and shall give the Lender the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The Lender shall have the right to cause all indebtedness of the Borrower to the Lender under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The Lender may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Lender as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Lender Deed of Trust. The Borrower shall be liable to pay the Lender on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the Lender in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The Lender shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The Lender shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the Lender for any funds advanced by the Lender to cure a monetary default by Borrower upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

### 3.3 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Lender or the rights of the Lender hereunder.

3.4 Remedies Cumulative. No right, power, or remedy given to the Lender by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Lender by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the

failure nor any delay on the part of the Lender to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy. Any material breach by the Borrower of any representation, warranty or covenant hereunder, which is not cured within thirty days (30) after notice thereof given by the Lender or, where cure is not possible within thirty (30) days, whose cure is not commenced within thirty days and diligently prosecuted to completion shall constitute an Event of Default.

3.5 Lender's Remedies. Upon the happening of an Event of Default, the Lender may pursue any remedy allowed at law or in equity, including but not limited to, accelerating payment under the Note or applying to any State court for specific performance of this Agreement and the Regulatory Agreement.

## ARTICLE 4 MISCELLANEOUS PROVISIONS

4.1 Conflict of Interest. No employee, agent, consultant, officer, elected or appointed official or member of the Lender has or may obtain a personal or financial interest in or benefit from the Borrower or the Project or in any contract or subcontract or agreement, or the proceeds thereof, relating to the Project or the Property itself, either for themselves or for those with whom they have family or business ties, during their tenure with Lender or one year thereafter.

4.2 Nondiscrimination. All of the units (excluding the manager unit) shall be available for occupancy on a continuous basis to members of the general public who are eligible households and income eligible. The Borrower shall not give preference to any particular class or group of persons in renting the units, or any part of the Property, except to the extent that the units are required to be leased to Low-Income Households. The Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

4.3 Hold Harmless.

- (a) The Borrower hereby agrees to, and shall, hold Lender, its elective and appointive boards, council members, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from the Borrower's operations under this Agreement, whether such operations be by the Borrower or subcontractor, or by any one of more persons directly or indirectly employed by, or acting as agent for, the Borrower or any subcontractor. The Borrower agrees to, and shall, hold the Lender, its elective and appointive boards, council members, officers, agents and employees harmless from any suits or actions at law or in

equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations.

- (b) The Borrower agrees to provide all costs of any necessary legal defense and all attorneys' fees incurred in defending any claim, whether or not actually filed in any court.

4.4 Amendment. This Agreement may be amended only by a written instrument signed by authorized representatives of the Lender and the Borrower. The City Manager or his/her designee shall be authorized to act on behalf of the Lender.

4.5 Notice. Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

Lender: City of Sunnyvale  
Housing Officer  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

With a copy to: City of Sunnyvale  
City Attorney  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

Borrower: MP Morse Court Associates, a California limited partnership  
c/o Mid-Peninsula Monte Vista Terrace Corporation  
303 Vintage Park Drive, Suite 250  
Foster City, CA 94404

Attn: Matthew O. Franklin

With a copy to Trustor's investor limited partner:

Mid-Peninsula San Ramon Corporation  
303 Vintage Park Drive, Suite 250  
Foster City, CA 94404

4.6 No Waiver. No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

4.7 Severability. Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

4.8 Titles and Headings. The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.

4.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

4.10 Attorneys' Fees. The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

4.11 No Third Party Beneficiary. This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

4.12 No Pledging of Lender's Credit. Under no circumstances shall the Borrower have the authority or power to pledge the credit of Lender or incur any obligation in the name of Lender. Borrower shall save and hold harmless Lender, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.

4.13 Venue. In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

4.14 Judicial Reference. It is the desire and intention of the parties to agree upon a mechanism and procedure under which any claim, controversy, breach or dispute arising out of this Agreement, including, without limitation, the interpretation of any term or provision of this Agreement, or any claim, controversy, breach or dispute arising out of the work, services or obligations performed under a this Agreement, including, without limitation, the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to, or survey of, the Project, (individually, referred to as a "Dispute", and collectively referred to as "Disputes") will be resolved in a prompt and expeditious manner. Accordingly, all or any such Disputes, whether seeking damages or equitable relief, shall be subject to the procedures set forth in this section. Any unresolved Disputes shall be heard by a referee pursuant to the provisions of the California Code of Civil Procedure, Sections 638-645.1, inclusive, and as set forth in this section:

4.14.1 Procedure for Appointment. The venue of any proceeding brought under this section shall be in Santa Clara County, California (unless changed by order of the referee). The party seeking to resolve the Disputes shall file in court and serve on the other party a complaint describing the matters in dispute. Service of the complaint shall be as prescribed by law. At any time after service of the complaint, any party may request the designation of a referee to try the dispute. Thereafter the parties shall use their best efforts to agree upon the selection of a referee. If the parties are unable to agree upon a referee within ten (10) days after a written request

to do so by any party, then any party may petition the presiding judge of the superior court in which the action is filed or the superior court judge to whom the matter has been assigned (the "Judge") to appoint a referee. For the guidance of the Judge making the appointment of the referee, the parties agree that the person so appointed shall be a retired judge or a lawyer experienced in the subject matter of the dispute.

- 4.14.2 Appointment of Proposed Referee as Judge Pro Tem. In recognition that (1) there is no action pending as of the date of this Agreement in which the parties thereto can stipulate to the appointment of a temporary judge, (2) there is no statute authorizing such a stipulation in advance of the filing of an action in the superior court, and (3) the appointment of a referee as a temporary judge ("judge pro tem") under Article VI, Section 21 of the California Constitution and California Rules of Court Rule 244, would be preferable to a general reference, the parties hereby covenant that in the event of the filing of an action in the superior court to resolve all or any disputes, the parties thereto shall use their best efforts to stipulate that the proposed referee be appointed as a temporary judge under Article VI, Section 21 of the California Constitution.
- 4.14.3 Decision and Jurisdiction of Referee. The referee or judge pro tem shall decide all issues of fact and law submitted by the parties for decision in the same manner as required for a trial by court, including all law and motion matters, ex parte matters and discovery disputes. The referee or judge pro tem shall try and decide any or all Disputes according to all of the substantive, evidentiary and procedural law of the State of California. When the referee or judge pro tem has decided the Disputes, the referee or judge pro tem shall prepare a statement of decision and judgment. The judgment entered by the Superior Court shall be appealable in the same manner as any other judgment.
- 4.14.4 Discovery. Discovery shall be allowed and conducted under the supervision of the referee or judge pro tem pursuant to the provisions of the California Code of Civil Procedure and the California Rules of Court.
- 4.14.5 Cooperation. The parties shall diligently cooperate with one another and the person appointed as referee or judge pro tem to resolve each and every Dispute and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of all such Disputes. If either party refuses to diligently cooperate, and the other party, after first giving notice of its intent to rely on the provisions of this subparagraph, incurs additional expenses or attorneys' fees solely as a result of such failure to diligently cooperate, the referee or temporary judge may award such additional expenses and attorneys' fees to the party giving such notice, even if such party is not the prevailing party in the dispute.
- 4.14.6 Allocation of Costs. The cost of the reference shall be borne equally by Borrower and Lender.
- 4.14.7 Special Disclosure. Notice: By signing this Agreement, Lender and Borrower agree to have all and any Disputes decided by judicial reference in accordance

with California Code of Civil Procedure, Sections 638-645.1, and Lender and Borrower are giving up any rights Lender and Borrower might possess to have the Dispute litigated by a jury trial. If Lender or Borrower refuses to submit to judicial reference after agreeing to this provision, such party may be compelled to submit to judicial reference. The parties' agreement to this judicial reference provision is voluntary.

IN WITNESS WHEREOF, the Lender and the Borrower have executed this Agreement as of the date first set forth above.

**LENDER:**

City of Sunnyvale, a  
municipal corporation

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By: Deanna Santana  
Its: City Manager

**BORROWER:**

MP Morse Court Associates,  
a California limited partnership

By: Mid-Peninsula Coalition  
Monte Vista Terrace Corporation  
Its: General Partner

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By: Matthew O. Franklin  
Its: Assistant Secretary

APPROVED AS TO FORM:

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By: Robert Boco  
Senior Assistant City Attorney



*“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 )  
COUNTY OF SANTA CLARA )

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 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 \_\_\_\_\_ (Seal)

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

STATE OF CALIFORNIA )  
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 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 \_\_\_\_\_ (Seal)

**EXHIBIT A**

**Legal Description**

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

Parcel 2, as shown on that certain map entitled, "PARCEL MAP LANDS OF CITY OF SUNNYVALE AND CHUNG WU KUAN ET AL BEING A PORTION OF LOT 7 L.L. MORSE SUBDIVISION, CITY OF SUNNYVALE, SANTA CLARA COUNTY, CALIFORNIA", filed in the office of the Recorder of the County of Santa Clara, State of California on May 8, 1980 in Book 463 of Maps at Pages 10 and 11.

Assessor's Parcel No. 204-06-046

Situs Address: 825 Morse Avenue, Sunnyvale, CA 94085

**EXHIBIT B****Project Budget****USES**

<b>Hard Costs</b>	
Exterior	\$342,000
Interior	\$376,900
Site Work	\$175,000
General Contractor Overhead (14%)	\$125,146
10% Contingency	\$101,905
<b>Total Hard Costs</b>	<b>\$1,120,951</b>
<b>Soft Costs</b>	
Design/Engineering	\$50,000
Construction/Project Management	\$117,257
Permits	\$10,000
Legal Expenses, Title Costs	\$6,000
Furniture Movers (as needed)	\$28,792
<b>Total Soft Costs</b>	<b>\$212,049</b>
<b>TOTAL PROJECT COSTS</b>	<b>\$1,333,000</b>

**SOURCES**

City of Sunnyvale Housing Mitigation Loan	\$1,000,000
Morse Court Property Replacement Reserve / MidPen Loan	\$333,333
<b>TOTAL SOURCES</b>	<b>\$1,333,333</b>

*\* Developer is required to and has committed to providing matching funds equal to 25% of the total project cost as a condition of the City Loan approval.*

Any change to this budget that would modify one or more of the above line items by 10% or more shall require prior written approval of the Community Development Director or his/her designee.

**EXHIBIT C****Scope of Work and Cost Estimates**

<b>Work Item</b>	<b>Description</b>	<b>Cost</b>
<b>Exterior</b>		
Roofs	Replace flat roofs	\$ 75,000
Railings, balcony decks, siding	Recoat decks, remove T-111 siding & replace w/Hardie siding	\$ 100,000
Windows	Replace single-paned windows w/double-paned	\$ 159,000
Doors	Add security screen doors where needed	\$ 8,000
<b>Interiors</b>		
Kitchen cabinets	Include countertops, sink and plumbing	\$ 128,000
Bathroom vanities	Include plumbing	\$ 15,200
Blinds	Replace after replacing windows (allowance)	\$ 20,000
Water heaters	Replace 3 of 5	\$ 24,000
Bathroom fans	Replace with green alternative motion sensor fans	\$ 43,200
Vinyl flooring	Bathrooms and kitchens	\$ 18,000
Lighting	New fluorescent energy efficient fixtures in all rooms	\$ 36,000
Unit gas furnaces	Replace any failing combustion testing or other	\$ 30,000
Ceiling fans	Add where possible in bedrooms & living rooms	\$ 50,000
Laundry room	Replace flooring, miscellaneous upgrades (allowance)	\$ 10,000
Management office	Upgrade HVAC (allowance)	\$ 2,500
<b>Site Work</b>		
Mailboxes	Replace with parcel boxes (allowance)	\$ 5,000
Storm drainage improvements	Address ponding near office (allowance)	\$ 5,000
Walkways	Add walkways near patio doors (allowance)	\$ 10,000
Landscaping	Retrofit irrigation, remove grass; planting to remain (allowance)	\$ 65,000
Playground	Remove play structure; replace with seating/picnic area	\$ 30,000
Site lighting	Carport lights, install more wall mounted lights (allowance)	\$ 25,000
Signage	Unit signs and building signs (allowance)	\$ 25,000
Fencing	Replace segment acting as retaining wall if possible (allowance)	\$ 10,000
<b>Hard Costs Subtotal</b>		<b>\$ 893,900</b>
14% GC Overhead		\$ 125,146
Total Construction Contract		\$ 1,019,046
10% Contingency		\$ 101,905
<b>Total Hard Costs</b>		<b>\$ 1,120,951</b>

<b>Soft Costs</b>	
Architecture, engineering, waterproofing consultant	\$ 50,000
Permits	\$ 10,000
Legal expenses, title, closing costs	\$ 6,000
6% Construction management	\$ 67,257
Project Management	\$ 50,000
Movers (for resident furnishings during construction)	\$ 28,792
<b>Grand Total: Hard &amp; Soft Costs</b>	<b>\$ 1,333,000</b>

### Scope of Work Timeline:

All work items included in the above Scope of Work table shall be completed, as evidenced by a certificate of occupancy and notice of completion, within twelve months of loan closing.