

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Pleasanton
123 Main Street
Pleasanton, CA 94566
Attention: City Manager

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

**AFFORDABLE HOUSING REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

by and between

THE CITY OF PLEASANTON

and

_____, **L.P.**

(Sunflower Hill)

_____, 20__

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 20__ (“**Effective Date**”) by and between the City of Pleasanton, a municipal corporation (“**City**”) and _____, L.P., a California limited partnership (“**Owner**”). The City and the Owner are collectively referred to herein as the “**Parties**.”

RECITALS

A. City owns the real property located in the City of Pleasanton, Alameda County, California, located on Stanley Boulevard, consisting of approximately 1.64 acres, known as Alameda County Assessor Parcel No. _____, and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. City and Owner have entered into a ground lease dated as of the date hereof (the “**Ground Lease**”), pursuant to which Owner will lease the Property from City for a term of seventy-five (75) years, and develop, own and operate an affordable special needs housing development consisting of 31 apartments and related improvements (the “**Project**”) in accordance with the Ground Lease and that certain unrecorded Disposition, Development, and Loan Agreement (the “**Loan Agreement**”) dated as of _____, 2018 and executed by and between Owner and City. A Memorandum of the Ground Lease will be recorded in the Official Records substantially concurrently herewith.

C. The Loan Agreement and the Ground Lease provide that the Restricted Units to be developed on the Property will be required to be available to Eligible Households at Affordable Rents in accordance with this Agreement for a period of not less than the term of the Ground Lease.

D. Subject to the terms and conditions set forth in the Loan Agreement, City has agreed to provide a loan to Owner in the original principal amount of Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000) (the “**Loan**”) to assist in financing development of the Project. As a condition precedent to the funding of the Loan, City requires the Project and Owner’s leasehold in interest in the Property to be subject to the terms, conditions and restrictions set forth herein.

E. Pursuant to the Loan Agreement, Owner shall execute and deliver to City a Secured Promissory Note (the “**Note**”) to evidence Owner’s obligation to repay the Loan. The Note shall be secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing that shall be executed by Owner for the benefit of City (the “**Deed of Trust**”) and recorded against Owner’s leasehold interest in the Property substantially concurrently herewith.

F. The purpose of this Agreement is to satisfy the affordability requirements of the City’s affordable housing program and to regulate and restrict the occupancy and rents of the Project’s Restricted Units for the benefit of the Project occupants. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner’s successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

“Actual Household Size” means the actual number of persons in the applicable household.

“Adjusted for Family Size Appropriate for the Unit” shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to Project financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986 as amended (or successor provision).

“Affordable Rent” means the following amounts, less a utility allowance and other fees and charges required to be paid by tenants of the Project on a non-optional basis: (i) for units that are restricted for rental to households with incomes of not more than twenty percent (20%) of AMI (**“20% Units”**), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of twenty percent (20%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, (ii) for units that are restricted for rental to households with incomes of not more than forty percent (40%) of AMI (**“40% Units”**), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of forty percent (40%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit; (iii) for units that are restricted for rental to households with incomes of not more than fifty percent (50%) of AMI (**“50% Units”**), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of fifty percent (50%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit; and (iv) for units that are restricted for rental to households with incomes of not more than sixty percent (60%) of AMI (**“60% Units”**), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of sixty percent (60%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

“Area Median Income” or **“AMI”** means the median income for Alameda County, California, adjusted for Actual Household Size, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development (**“HCD”**) in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

“City’s Authorized Representative” means the City Manager of the City of Pleasanton.

“City Documents” means the Loan Agreement, the Note, the Deed of Trust, the Ground Lease, and this Agreement.

“Claims” means collectively, liabilities, losses, costs, expenses (including without limitation attorneys’ fees and costs of litigation), claims, demands, actions, suits, judicial or administrative proceedings, penalties, deficiencies, fines, orders, and damages.

“**Deed of Trust**” is defined in Recital E.

“**Eligible Household**” means a household that includes one or more members that have a developmental disability as defined in subdivision 4512(a) of the California Welfare and Institutions Code, and for which Gross Income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Section 2.2 and Exhibit B.

“**Gross Income**” shall have the meaning set forth in Section 6914 of Title 25 of the California Code of Regulations as such Section may be revised from time to time.

“**Ground Lease**” is defined in Recital B.

“**HUD**” means the U.S. Department of Housing and Urban Development.

“**Indemnitees**” means collectively, the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors.

“**Loan**” is defined in Recital D.

“**Loan Agreement**” is defined in Recital B.

“**Marketing and Management Plan**” is defined in Section 6.5.

“**Note**” is defined in Recital E.

“**Rent Restricted**” is defined in Section 2.1.

“**Restricted Unit**” means a dwelling unit which is reserved for occupancy at an Affordable Rent by Eligible Households of specified household income levels as set forth in Sections 2.1 and 2.2 and Exhibit B.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the operation of a multifamily rental housing development for households that include one or more members who have developmental disabilities, in compliance with the Loan Agreement, the Ground Lease, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Special Needs Housing; Supportive Services. Owner has elected to operate the Project as a special needs housing development that will serve households that include one or more members that have a developmental disability as defined in subdivision 4512(a) of the California Welfare and Institutions Code, and as such to require all dwelling units in the Project except for the managers’ units to be occupied or held available for occupancy by Eligible Households. To the extent applicable, the Project will be operated at all times in accordance with (a) the Unruh Act, including without limitation California Civil Code Sections 51.2, 51.3, and

51.4; (b) the federal Fair Housing Act, 42 U.S.C. Section 3607(b) and 24 CFR 100.304; (c) the California Fair Employment and Housing Act, Government Code Section 12900 *et seq.*, and (d) all other applicable laws and regulations. Owner will indemnify, defend, and hold the Indemnitees harmless from all Claims arising out of Owner's failure to comply with applicable legal requirements related to housing for persons with developmental disabilities. The indemnity provisions of this paragraph shall survive the expiration or other termination of this Agreement. Owner shall make the following supportive services available to residents of the Project: _____ . Owner shall be obligated to provide or arrange for the provision of supportive services to residents of the Project in accordance with the Plan described in Sections 6.4 and 6.5 below.

2.2 Affordability and Occupancy Requirements. Throughout the Term of this Agreement (as defined in Section 4.1 below): not less than six (6) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than twenty percent (20%) of Area Median Income, not less than an additional three (3) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than forty percent (40%) of Area Median Income, not less than an additional fourteen (14) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than fifty percent (50%) of Area Median Income, and not less than an additional six (6) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than sixty percent (60%) of Area Median Income. Two (2) residential units shall be manager/staff units that will not be subject to rent or occupancy restrictions. Developer shall comply with rent and occupancy restrictions imposed by all applicable financing sources and regulatory agencies if such agencies impose requirements on the Project that are more stringent than those set forth in this Agreement.

Notwithstanding any contrary provision of this Agreement, if any residential units in the Project are subsidized with Section 8 project-based vouchers through a Housing Assistance Payment Contract with HUD, the rules and regulations applicable to such program shall prevail with respect to the setting of rents, implementation of occupancy requirements, and determination of Gross Income.

In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in this Section 2.1 and Exhibit B, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) until the required income mix is achieved. A dwelling unit shall qualify as "**Rent Restricted**" if the gross rent charged for such unit does not exceed the Affordable Rent for the applicable household income category as set forth in Exhibit B, subject to Section 2.2.

Notwithstanding anything to the contrary contained in this Agreement, if other Project lenders, Project investors, or regulatory agencies restrict a greater number of units than restricted by this Agreement or require stricter household income eligibility or affordability requirements than those imposed hereby, the requirements of such other lenders, investors or regulatory agencies shall prevail, including without limitation, the rent and occupancy requirements imposed in connection with the use of project based vouchers or other rent subsidies.

2.3 Rents for Restricted Units; Unit Sizes. For all Restricted Units, rents shall be limited to Affordable Rents for households of the applicable income limit in accordance with Section 2.2 and Exhibit B. The Restricted Units shall be allocated among affordability categories as set forth in Exhibit B. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's household income increases to exceed the qualifying limit for such Restricted Unit. A household which at initial occupancy qualifies in a particular income category shall be treated as continuing to be of such income category so long as the household's Gross Income does not exceed one hundred forty percent (140%) of the applicable income limit. In the event the Gross Income of a household that qualified at the applicable income limit at initial occupancy exceeds the applicable income limit for a unit, that unit will continue to be considered as satisfying the applicable income limit if the unit remains Rent-Restricted. In the event a tenant's household Gross Income exceeds the limits specified in this Section, Owner shall apply the rules applicable to the Project pursuant to Section 42 of the Internal Revenue Code of 1986, as amended and the federal Regulations applicable thereto. In the event of inconsistency between the provisions of this Section 2.3 and the rules applicable to the Project in connection with low-income housing tax credits, the rules applicable to low-income housing tax credits shall prevail.

2.4 Manager's Unit. Two (2) dwelling units in the Project may be used as resident manager's unit, and shall be exempt from the occupancy and rent restrictions set forth in this Agreement.

2.5 No Condominium Conversion. Owner shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Project or any part thereof during the term of this Agreement.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 Preference for City of Pleasanton Residents and Employees. In order to ensure that there is an adequate supply of affordable housing within the City of Pleasanton for residents and employees of businesses within the City, to the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, Owner shall give a preference in the rental of the residential units in the Project to Eligible Households that include a member who lives or works in the City of Pleasanton. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, or HUD regulations applicable to the Project (including without limitation, requirements applicable to the Project due to any Section 8 rental subsidy contract), the provisions of such Section 42 and HUD regulations and requirements shall control. Owner shall comply with City's Affirmative Marketing Policies or other rental policies and procedures as they may be amended from time to time to ensure that residents and people who work in Pleasanton are provided reasonable notice and opportunity to rent units in the Project.

2.6.2 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or

vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.3 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner 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 in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith. Nothing in this Section 2.6.3 is intended to prevent the reservation of residential units in the Project for occupancy by households that include one or more members that have a developmental disability as defined in subdivision 4512(a) of the California Welfare and Institutions Code.

All deeds, leases, and contracts pertaining to management of the Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee 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 in the property herein conveyed. The foregoing covenant shall run with the land.”

(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(b) (1) In Leases, the following language shall appear:

The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(c) In Contracts pertaining to management of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.

(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

3. Reporting Requirements; Access to Information; Inspections; Annual Monitoring Fee.

3.1 Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

- (i) The identity of each household member;
- (ii) The total household Gross Income; and

- (iii) The basis upon which each household qualifies as an Eligible Household.

Owner shall retain such certificates for not less than five (5) years, and upon City's request, shall provide copies of such certificates to City and make the originals available for City inspection.

3.2 Annual Report; Inspections. Following completion of construction of the Project, by not later than June 1 of each year during the term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City, together with a certification that the Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total Gross Income of the household; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Owner may satisfy the requirements of this Section that pertain to tenant income certification and rents by providing City with a copy of compliance reports required in connection with such financing.

In addition to the information described above, the Annual Report shall include the following:

- (i) A Project income and expense statement for the reporting period;
- (ii) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;
- (iii) A report on maintenance and other issues anticipated to affect the current budget needs of the Project as well as the amount in the Project's reserve accounts and the amount expected to be needed for major repairs or other needs during the new fiscal year;
- (iv) Information on the status of the waiting list for units, including the number of households on the list and the number of City of Pleasanton residents and persons employed in the City on the list; and
- (v) A financial audit of the books and records of the Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant.

(vi) City may, in its reasonable discretion, from time to time request additional or different information, and Owner shall promptly supply such information in the reports required hereunder.

3.3. Maintenance of Records.

3.3.1 Owner shall maintain all records regarding the construction of the Project for five (5) years after final payment and all other pending matters are closed. Owner shall also maintain tenant leases, income certifications and other matters related to the leasing of the affordable units for a period of five (5) years after the final date of occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days from such notice to correct any specified deficiency in the records, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within fifteen (15) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.4 Access to Records; Inspections.

3.4.1 With at least 48-hours' notice, during normal business hours, Owner shall provide City and its authorized agents and representatives access to any books, documents, papers and records of the Project for the purpose of making audits, examinations, excerpts and transcriptions.

3.4.2 With at least 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Project and the Property and to interview tenants and employees of the Project, for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement and the other City Documents.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the later of (i) the seventy-fifth (75th) anniversary of the date upon which the Project construction loan converts to permanent financing, or (ii) the expiration of the term of the Ground Lease.

Notwithstanding the foregoing, in the event that the Project has not been constructed prior to the date that the PUD permit applicable to the Property expires, this Agreement shall terminate of its own accord with no action required; provided however, the Parties each agree to execute and cause a termination of this Agreement to be recorded in the Official Records in the event that this Agreement has terminated pursuant to this paragraph.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Project or Owner's leasehold interest in the

Property, or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan, the Note, or (iii) any reconveyance of the Deed of Trust.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Project.

6.2 Management Entity; Social Services Provider; Referral Agency. City shall have the right to review and approve the qualifications of (i) the management entity, (ii) the social services provider, and (iii) the agency that will refer Eligible Households for prospective occupancy of the Project, that Owner proposes to engage, and shall have the right to review and approve any agreement executed between Owner and such entities, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties.

City hereby approves _____, a California nonprofit public benefit corporation, as the initial management entity for the Project. Any subsequent management entity or social services provider shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Project in accordance with this Agreement, subject to any applicable cure period and the approval of the Project lenders and equity investors, City may require Owner to contract with a qualified management agent selected by City and approved by the Project lender and equity investor, to operate the Project, or to make such other arrangements as City deems necessary to ensure performance of the required functions.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security measures for the Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.3.1 Additional Requirements. All construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Pleasanton business license if required under local law. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law.

6.5 Marketing and Management Plan. Not later than ninety (90) days following commencement of construction work on the Project, Owner shall submit for review and approval by the City, the Alameda County Department of Housing & Community Development, and HUD, a plan for marketing and managing the Property ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Project tenants. In addition, the Plan shall include: (i) information regarding the qualifications of the proposed social services provider that will provide services to Project residents and a copy of the social services agreement, and (ii) information regarding the organization or agency that will provide referrals of Eligible Households for prospective occupancy of the residential units in the Project. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement, shall submit proposed modifications to City for review and approval.

In addition to the foregoing, the Marketing and Management Plan shall address the following:

- (a) The actions to be taken by Owner to affirmatively market units in compliance with fair housing laws and in compliance with City's policies and procedures, including the policies described in Section 2.6 above;
- (b) Criteria for determining tenant eligibility, including certification of household income and size, age of household members or other qualifying criteria, and establishing reasonable occupancy standards (which shall not exceed standards established by state and federal fair housing laws and state housing and building codes), and procedures for screening prospective tenants, including obtaining credit reports, unlawful detainer reports, landlord references and criminal background investigations;
- (c) A requirement that eligible tenants be selected based on order of application, lottery or other reasonable method approved by City;
- (d) A requirement that eligible applicants be notified of eligibility and be provided an estimate regarding when a unit may be available;
- (e) A requirement that ineligible applicants be notified of the reason for their ineligibility;
- (f) Specific procedures through which applicants deemed to be ineligible may appeal this determination;
- (g) Maintenance of a waiting list of eligible applicants;

- (h) Specific procedures for obtaining documentation regarding prospective tenants' incomes, as necessary, to certify that such income does not exceed income limits;
- (i) Specific procedures for certification and recertification of household incomes and procedures for handling over-income tenants;
- (j) A requirement that a written rental agreement (subject to City approval) be executed with each eligible household selected to occupy a unit;
- (k) A detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant upon occupancy;
- (l) A requirement that there be no storage on balconies and patios and that tenants must keep all balconies, patios and other exterior areas neat, clean and clutter free, including no clotheslines or laundry;
- (m) A parking management plan which details, among other things, how parking spaces will be assigned, how guest parking will be handled and how parking will be managed to encourage tenants to use their assigned parking spaces;
- (n) Procedures for maintenance and management of the Project;
- (o) Procedures for dealing with tenant or neighborhood issues or concerns;
- (p) Procedures for maintaining a reserve account, budgeting for maintenance and repair needs as well as long-term rehabilitation needs, and handling net cash flow; and
- (q) Such other requirements and criteria/procedures as City may reasonably determine appropriate.

6.6 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, the proposed management agreement, or a proposed amendment or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City.

6.7 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any

decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.8 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit C, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit C.

6.9 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of Alameda County. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the financing plan submitted to City for the Project, as such plan may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Loan Agreement or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Loan Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

8.2 Permitted Transfers. Notwithstanding any contrary provision of the City Documents, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of

any property required pursuant to the Loan Agreement; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the Loan Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a Transfer to a tax-exempt entity under the direct control of or under common control with Satellite Affordable Housing Associates, a California nonprofit corporation (“SAHA”); (vi) a Transfer to a limited partnership in which a tax-exempt affiliate of SAHA is the managing general partner (“**Approved Partnership**”); (vii) the admission of limited partners and any transfer of limited partnership interests in accordance with Owner’s, or the Approved Partnership’s, as applicable, agreement of limited partnership (the “**Partnership Agreement**”); (viii) the removal of the general partner by the investor limited partner for cause in accordance with the terms of the Partnership Agreement, provided that the replacement general partner is an entity reasonably satisfactory to City or is an affiliate of the investor limited partner that will serve as general partner for an interim period of no more than 180 days; or (ix) the transfer of the general partner’s interest to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended (or to an entity wholly-owned thereby), provided such replacement general partner is reasonably satisfactory to City.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv), and (vii) of Section 8.2, and solely with respect to (a) the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, and (b) the replacement of the general partner with an affiliate of the investor limited partner for an interim period of not more than 180 days, clause (viii) of Section 8.2:

(i) The proposed transferee demonstrates to the City’s satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee’s qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner’s obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument

satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Project shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies including without limitation, acceleration of the Loan and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Improvements, or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv), and (vii) of Section 8.2, and solely with respect to (a) the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, and (b) the replacement of the general partner with an affiliate of the investor limited partner for an interim period of not more than 180 days, clause (viii) of Section 8.2.

8.5 Intentionally omitted.

8.6 Encumbrances. Owner agrees to cooperate with City in good faith to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose the Deed of Trust, and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Unless this Agreement is subordinated in accordance with Section 7, such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of

trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (i) The occurrence of a Transfer in violation of Section 8 hereof;
- (ii) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within five (5) days;
- (iii) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;
- (iv) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;
- (v) A default arises under the Loan Agreement, the Note, the Deed of Trust, or the Ground Lease and remains uncured beyond the expiration of any applicable cure period;
- (vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith to completion.

The limited partners of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner; provided however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general partner of Developer in order to cure such default, then the cure period shall be extended by an additional sixty (60) days after the removal and replacement of such general partner, provided that the limited partners have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement. City shall provide a copy of any notice of default hereunder to the limited partners at the address set forth in Section 11.3 hereof, or to such other address provided to the City in writing, concurrently with the provision of such notice to Owner.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

- (i) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;
- (ii) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the Deed of Trust;
- (iii) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent; or
- (iv) Pursue any other remedy allowed under the City Documents or at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify City and the other Indemnitees, including without limitation, Sections 2.6 and 10. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

(b) Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any

extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting City's recourse to property securing the Secured Obligations (as defined in the Deed of Trust), or limiting the personal liability of Owner, or any other party for payment of all or any part of the indebtedness evidenced by the Note; (iv) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under any City Document, (v) the release of Owner or any other person, by City or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for repayment of the indebtedness evidenced by the Note; and (vii) City's failure to properly perfect any lien or security interest given as security for repayment of the indebtedness evidenced by the Note.

(c) The obligations of Owner to indemnify the Indemnitees shall survive any repayment or discharge of the indebtedness evidenced by the Note, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566
Attention: City Manager

With a copy to: Burke, Williams & Sorensen, LLP

1901 Harrison Street, 9th floor
Oakland, CA 94612
Attention: Susan E. Bloch, Esq.

Owner:

c/o Sunflower Irby LLC
c/o Satellite Affordable Housing Associates
1835 Alcatraz Avenue
Berkeley, CA 94703
Attention: Executive Director

With a copy to:

And with a copy to:

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

11.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this

Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Pleasanton shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the Loan Agreement, the Note, the Deed of Trust, and the Ground Lease contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through C, attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY:

City of Pleasanton, a municipal corporation

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

OWNER:

_____, L.P.

By:

Its: General Partner

By: _____

Its: _____

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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, _____,
(Name of Notary)

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.

(Notary Signature)

ACKNOWLEDGMENT

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, _____,
(Name of Notary)

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.

(Notary Signature)

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to is situated in the County of Alameda, City of Pleasanton, State of California, and is described as follows:

Exhibit B

Number of Units by Unit Size and Targeted Area Median Income (AMI) Levels

Maximum Household Income	20% AMI	40% AMI	50% AMI	60% AMI	Sub-Total	Mgr Unit	Total
Studio	-	-	-	-	0	1	1
1-Bedroom	5	3	14	-	22	0	22
2-Bedroom	1	-	-	6	7	1	8
Total	6	3	14	6	29	2	31

Exhibit C

INSURANCE REQUIREMENTS

Prior to initiating work on the Project and continuing through throughout the term of this Agreement, Owner shall obtain and maintain the following policies of insurance:

(a) a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage, or such other policy limits as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) if Owner owns any vehicles, a comprehensive automobile liability coverage in the amount of Two Million Dollars (\$2,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Owner and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Owner shall furnish or cause to be furnished to City evidence satisfactory to City that Owner (if it has any employees) and any contractor that has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident.

(d) Upon commencement of construction and continuing until issuance of a Certificate of Completion, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(e) Upon completion of Project construction, Owner shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(f) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payee as its interests may appear.

(g) Prior to commencement of construction work, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall

contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by the City Attorney, Owner shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(h) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

(i) Coverage provided by Owner shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Owner shall furnish the required certificates and endorsements to City prior to the commencement of construction work on the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

(j) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and if such deductibles or retentions differ from those specified in the insurance policies approved by City as of the Effective Date, they shall be subject to approval by, the City Attorney. At the option of and upon request by the City Attorney if the City Attorney determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(k) Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstances, including, but not limited to, changes in the purchasing power of the dollar and the litigation climate in California, provided that such adjustments are consistent with generally prevailing requirements for residential multi-family developments similar to the Project and located in the San Francisco/Alameda County area. Within thirty (30) days following City's delivery of written notice of any such adjustments, Owner shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

(1) Additional Insured. For all liability insurance required by this Agreement, Owner (and Owner's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner (and Owner's contractors) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner (or Owner's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Owner (or Owner's contractors as applicable) obtain insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of such minimum amounts.

Recording Requested by
and when Recorded, return to:

City of Pleasanton
123 Main Street
Pleasanton, CA 94566
Attention: City Manager

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

(Sunflower Hill)

THIS LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“**Deed of Trust**”) is made as of _____, 20__, by _____, L.P., a California limited partnership (“**Trustor**”) to Old Republic Title Company as trustee (“**Trustee**”), for the benefit of the City of Pleasanton, a municipal corporation (“**Beneficiary**”).

RECITALS

A. Beneficiary owns fee simple title to the land described in Exhibit A attached hereto and incorporated herein by this reference (the “**Land**”). Beneficiary and Trustor have entered into a ground lease (the “**Ground Lease**”) dated as of the date hereof, pursuant to which Trustor shall lease the Land for the purposes of developing and operating a 31-unit affordable rental special needs housing development on the Land (the “**Project**”). A Memorandum of the Ground Lease will be recorded in the Official Records of Alameda County substantially concurrently herewith.

B. Beneficiary and Sunflower Irby LLC, a California limited liability company (“**Sunflower Irby**”) entered into a Disposition, Development and Loan Agreement dated as of _____, 2018 (“**Loan Agreement**”). Pursuant to an Assignment and Assumption Agreement dated as of _____, 20__, Trustor has assumed Sunflower Irby’s rights and obligations under the Loan Agreement. Pursuant to the Loan Agreement, Beneficiary is providing a loan to Trustor in the amount of Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000) (the “**Loan**”) for the purpose of partially financing the Project. Trustor has issued to Beneficiary a secured promissory note dated as of the date hereof (the “**Note**”) to evidence Trustor’s obligation to repay the Loan.

C. As a condition precedent to the making of the Loan, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Project and in Trustor’s leasehold interest in the Land and interests in the Property (defined below) to secure repayment of the

Note and performance of Trustor's obligations under the Loan Agreement and the other City Documents (defined below).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows.

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the Land, and all of the following, whether presently owned or hereafter acquired:

a. All buildings, structures, and improvements, now or hereafter located or constructed on the Land ("**Improvements**");

b. All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, "**Appurtenances**");

c. All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, "**Equipment**");

d. All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, "**Leases**"), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, "**Rents**");

e. All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding ("**Proceeds**");

f. All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor ("**Gross Revenues**");

g. All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with development of the Land and construction of the Improvements (collectively, "**Plans**"); and

h. All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with development of the Land and construction of the Improvements (collectively, "**Financing**").

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the "**Property**."

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the "**Secured Obligations**"): (i) all present and future indebtedness evidenced by the Note and any amendment thereof, including principal, interest and all other amounts payable under the terms of the Note; (ii) all present and future obligations of Trustor to Beneficiary under the City Documents (defined below); (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust or any other City Document. The Loan Agreement, the Note, the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of the date hereof, executed by and between Trustor and Beneficiary and recorded substantially concurrently herewith, and this Deed of Trust, as any of the foregoing instruments may be modified, supplemented, amended, renewed, or extended, are herein after collectively referred to as the "**City Documents**."

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits,

including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one month.

4. Security Agreement. Trustor intends this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "UCC"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, Trustor intends that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If requested by Beneficiary, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall

not be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the estate encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall not be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in any financing statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government.

6. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Alameda County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds a leasehold interest in the Land, (ii) Trustor will hold a fee interest in the Improvements that Trustor will cause to be constructed on the Land pursuant to the Ground Lease, (iii) Trustor has good and marketable title to or a leasehold interest in all of the Property; (iv) other than as limited by the City Documents, or the Ground Lease, Trustor has the full and unlimited power, right and authority to encumber Trustor's interests in the Property with this Deed of Trust and assign the

Rents as contemplated herein; (iv) subject only to encumbrances of record and senior liens permitted pursuant to the City Documents or the Ground Lease, or otherwise approved in writing by Beneficiary (“**Permitted Encumbrances**”), this Deed of Trust creates a valid lien on Trustor’s entire interest in the Property; (v) except with respect to Permitted Encumbrances, Trustor holds a leasehold in the Land and will hold a fee interest in the Improvements Trustor will cause to be constructed on the Land pursuant to the Ground Lease free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (vi) there is no financing statement affecting the Property on file in any public office other than as disclosed in writing to Beneficiary; and (vii) the correct address of Trustor’s chief executive office is specified in Section 10.2.

Beneficiary agrees that it will not withhold consent to reasonable requests for subordination of this Deed of Trust to deeds of trust provided for the benefit of lenders identified in the Financing Plan approved in connection with the Loan Agreement, as such plan may be updated with Beneficiary’s approval, provided that the instruments effecting such subordination agreement include reasonable protections to the Beneficiary in the event of default, including without limitation, extended notice and cure rights.

7.2 Condition of Property. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof: (i) Trustor has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not previously been corrected, and (ii) all information that Trustor has delivered to Beneficiary, either directly or through Trustor’s agents, is accurate and complete.

7.3 Authority. Trustor represents and warrants that this Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that there are no pending, or to Trustor’s knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor’s ownership of, or interest in, the Property or part thereof.

7.4 Payment and Performance of Secured Obligations. Trustor shall promptly pay when due the principal and all interest due on the indebtedness evidenced by the Note, and shall promptly pay and perform all other obligations of Trustor arising in connection with the Secured Obligations, the Ground Lease, or the City Documents in accordance with the respective terms thereof.

7.5 Use of Loan Proceeds; Preservation and Maintenance of Property; Compliance with Laws. Trustor covenants that it shall use the proceeds of the Loan (the “**Loan Proceeds**”) solely for purposes authorized by the City Documents. Trustor covenants that it shall keep the Land and Improvements in good repair and condition,

and from time to time shall make necessary repairs, renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants that it shall comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Project, including without limitation all applicable requirements of state and local building codes and regulations, all applicable Prevailing Wage Laws, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and the Improvements solely for purposes authorized by the City Documents and the Ground Lease, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the City Documents or the Ground Lease.

7.6 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if the Property or the Improvements, or any part thereof or interest therein is sold, assigned, conveyed, transferred, hypothecated, leased, licensed, or encumbered in violation of the City Documents or the Ground Lease or if any other Transfer (as defined in the Loan Agreement) occurs in violation of the City Documents or the Ground Lease. If any such Transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.7 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the City Documents. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document the use of the Loan Proceeds and the operation of the Property, together with copies of all written contracts, Leases and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection by Beneficiary at any reasonable time following at least two business days prior notice.

7.8 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is

reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

7.9 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust.

7.10 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, at Trustor's expense, Trustor shall keep the Improvements and personal property now existing or hereafter located on the Property insured against loss by fire, vandalism and malicious mischief by a policy of standard fire and extended all-risk insurance. The policy shall be written on a full replacement value basis and shall name Beneficiary as loss payee as its interest may appear. The full replacement value of the improvements to be insured shall be determined by the company issuing the policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, either the Trustor or the Beneficiary shall have the right to notify the other party that it elects to have the replacement value redetermined by the insurance company. Subject to the rights of any senior lienholder, the proceeds collected under any insurance policy may be applied by Beneficiary to any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding the foregoing, if any senior lienholder permits such proceeds to be utilized for rebuilding or restoration of the Improvements, Beneficiary shall approve the use of the proceeds for such purpose.

7.10.1 Trustor shall at all times during the term hereof, maintain a comprehensive general liability insurance policy in an amount not less than Two Million Dollars (\$2,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage or such other policy limits as Beneficiary may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Beneficiary as an additional insured. Trustor shall maintain workers' compensation insurance as required by law.

7.10.2 Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may require, including without limitation, copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required by this Section, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy.

7.10.3 If any insurance policy required hereunder is canceled or the coverage provided thereunder is reduced, Trustor shall, within five (5) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, with notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.10.4 The insurance policies required hereunder shall be issued by insurance companies authorized to do business in the State of California with a financial rating of at least A VII status as rated in the most recent edition of Best's Key Rating Guide. Each policy of insurance shall contain an endorsement requiring the insurer to provide at least thirty (30) days written notice to Beneficiary prior to change in coverage, cancellation or expiration thereof.

7.11 Hazardous Materials. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof to the current actual knowledge of Trustor's principals: (i) Trustor has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Land are or have ever been in violation of any Environmental Law or informing Trustor that the Land is subject to investigation or inquiry regarding Hazardous Materials on the Land or the potential violation of any Environmental Law; and (ii) Trustor has disclosed to Beneficiary all information, records, and studies in Trustor's possession or reasonably available to Trustor relating to the Land concerning Hazardous Materials.

Trustor shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in connection with the construction, rehabilitation, repair, and operation of multi-family residential developments and in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

To the greatest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "**Indemnitees**") harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter

individually “**Claim**” and collectively “**Claims**”) arising in connection with the breach of Trustor’s covenants and obligations set forth in this Section 7.11 or otherwise arising in connection with the presence or release of Hazardous Materials in, on, under, or from the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee’s gross negligence or willful misconduct. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor’s own cost and expense, do all of the following:

a. pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust;

b. reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust; and

c. reimburse Indemnitees for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Deed of Trust, or in monitoring and participating in any legal or administrative proceeding.

Trustor’s obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting Beneficiary’s recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Deed of Trust or by Trustor or any other party under any City Document, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for the Secured Obligations; and (vii) Beneficiary’s failure to properly perfect any lien or security interest given as security for the Secured Obligations.

The provisions of this Section 7.11 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to

whether Beneficiary or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under any City Document or applicable law. The obligations of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Deed of Trust.

Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.11 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the “**Environmental Provisions**”), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure (“**Section 736**”) for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

“**Hazardous Materials**” means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic waste”, “toxic pollutant”, “toxic substance”, “solid waste” or “pollutant or contaminant” in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including

without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

“Environmental Law” means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.12 Notice of Claims; Defense of Security; Reimbursement of Costs.

a. Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000) within five business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

b. Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and Trustor's interest in and right of possession of the

Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

c. Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.18 and 8.2, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

d. Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any property, including books and records pertaining to the Property.

7.13 Indemnification. To the greatest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Indemnitees (as defined in Section 7.11) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any City Document, (b) any representation by Trustor in any City Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any City Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Trustor under this Section shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

7.14. Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary

in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property (excepting conditions caused by one or more Indemnitees); or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.14 and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.15 Condemnation Proceeds. Subject to the rights of any senior lienholders, and the provisions of the Ground Lease, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys to any indebtedness secured hereby in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

7.16 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any person liable for payment of any Secured Obligation, (ii) extend the time for payment or otherwise alter the terms of payment of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.17 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been paid in full, and upon surrender of this Deed of Trust, and the Note, Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Deed of Trust. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.18 Cure; Protection of Security. Upon the occurrence of an Event of Default, either Beneficiary or Trustee may cure any breach or default of Trustor if Trustor fails to do so within the applicable cure period, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in

and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 7.18 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

7.19 Limited Partners Right to Cure. Trustor's limited partners and the Project lenders shall have the right to cure any default of Trustor hereunder pursuant to the terms set forth in the Loan Agreement. Beneficiary shall provide any notice of default hereunder to such parties concurrently with the provision of such notice to Trustor, and as to the limited partners, and Project lenders, the cure periods specified herein and in the Loan Agreement shall commence upon the date of delivery of such notice in accordance with Section 10.2.

8. Default and Remedies.

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Deed of Trust upon the occurrence of any one or more of the following events:

a. Beneficiary's declaration of an Event of Default under any City Document or the Ground Lease, subject to the expiration of any applicable cure period set forth in such document;

b. Trustor fails to perform any monetary obligation which arises under this Deed of Trust, and does not cure that failure within ten (10) days following written notice from Beneficiary or Trustee;

c. If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.6 hereof or if any other Transfer occurs in violation of the City Documents or the Ground Lease;

d. Trustor fails to maintain the insurance coverage required hereunder and fails to cure such default within five (5) days, or Developer otherwise fails to comply with the requirements of Section 7.10 hereof and Trustor fails to cure such default within the applicable time specified in Section 7.10;

e. Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within and Tenant fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to pursue foreclosure thereof;

f. Any representation or warranty of Trustor contained in or made in connection with this Deed of Trust or in any other City Document, or made in connection with the execution and delivery of any certificate or statement furnished by or on behalf of Trustor in connection with the Loan proves to have been false or misleading in any material adverse respect when made;

g. If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Trustor or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

h. If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof or substantially all of such entity's assets, (iii) orders the liquidation of Trustor or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project or any part thereof, and in each case the order or decree is not released, vacated, dismissed or fully bonded within ninety (90) days after its issuance;

i. The holder of any other debt instrument secured by a mortgage or deed of trust on the Property or part thereof declares an event of default thereunder and exercises a right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder's documents;

j. Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within ten (10) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary's reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith.

8.2 Remedies. Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in any City Document, and any other remedy existing at law or in equity or by statute. All of Beneficiary's rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys' fees and costs.

a. Acceleration. Beneficiary may declare any or all of the Secured Obligations, including without limitation all sums payable under the Note and this Deed of Trust, to be due and payable immediately.

b. Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

c. Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

d. UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

e. Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

f. Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the 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, and at Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time and place 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 such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

Without limiting the generality of the foregoing, Trustor acknowledges and agrees that regardless of whether or not a default has occurred hereunder, if an Event of Default has occurred under the City Documents, and if in connection with such Event of Default Beneficiary exercises its right to foreclose on the Property, then: (i) Beneficiary shall be entitled to declare all amounts due under the Note immediately due and payable, and (ii) the proceeds of any sale of the Property in connection with such foreclosure shall be used to pay all Secured Obligations, including without limitation, the outstanding principal balance and all other amounts due under the Note.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

a. First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.12(c); and

b. Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

8.4 Trustor's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays Beneficiary all sums which would be then due under the City Documents if the Secured Obligations had no acceleration provision; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, and in enforcing Beneficiary's and Trustee's remedies as provided herein, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

10. Miscellaneous Provisions.

10.1 Additional Provisions. The City Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Deed of Trust shall be made in writing, and sent to the parties at

their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (a) personal delivery, in which case notice shall be deemed delivered upon receipt; (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail; or (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier.

Beneficiary: City of Pleasanton
123 Main Street
Pleasanton, CA 94566
Attention: City Manager

With a copy to:

Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th floor
Oakland, CA 94612
Attention: Susan E. Bloch, Esq.

Trustor:

With a copy to:

And with a copy to:

10.3 Binding on Successors. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive the provisions of Section 7.6.

10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of Alameda County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the jurisdiction where the Land is located (the

“Property Jurisdiction”). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the City Documents. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary’s or Trustee’s consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary’s acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

10.8 Action by Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary’s City Manager or by any person who shall have been designated by Beneficiary’s City Manager, without further approval by the governing board of Beneficiary.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor’s obligations under this Deed of Trust.

10.10 Time is of the Essence. Time is of the essence for each provision of this Deed of Trust.

10.11 Partial Subordination to Extended Use Agreement. Trustor and the California Tax Credit Allocation Committee may enter into a Regulatory Agreement (the **“TCAC Regulatory Agreement”**), which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the **“Code”**). In the event of a foreclosure of Beneficiary’s interest under this Deed of Trust or delivery by the Trustor of a deed in lieu thereof (collectively, a **“Foreclosure”**), the following rule shall apply:

In the event of a Foreclosure, throughout the extended use period specified in the TCAC Regulatory Agreement, with respect to any unit that had been regulated by the TCAC Regulatory Agreement, (i) none of the eligible tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause, including but not limited to, the tenants' ineligibility pursuant to Section 42 of the Code), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

11. Leasehold Mortgage Provisions. The provisions of this Section 11 shall apply for so long any portion of the Property consists of Trustor's interest as tenant under the Ground Lease defined and described in Recital A. As used in this Section 11, the term "**Ground Lease**" means the Ground Lease and any extension, renewal or replacement thereof. The lien of this Deed of Trust shall encumber all of Trustor's rights and interests under and in connection with the Ground Lease, including without limitation renewal and extension rights and purchase options (if any), all of which rights shall be collectively referred to herein as the "**Leasehold**".

11.1 Intentionally omitted.

11.2 Intentionally omitted.

11.3 Intentionally omitted.

11.4 Unless Beneficiary otherwise consents in writing, so long as any Secured Obligation remains outstanding, neither the fee title to, nor any other estate or interest in, the Property subject to the Ground Lease shall merge with any Leasehold, notwithstanding the union of such estates in the landlord or the tenant or in a third party. Any acquisition of the landlord's interest in the Ground Lease by Trustor or any affiliate of Trustor shall be accomplished in such a manner as to avoid a merger of the interests of landlord and tenant unless Beneficiary consents to such merger in writing.

11.5 If Trustor acquires fee title to any portion of the real property subject to the Ground Lease, this Deed of Trust shall automatically be a lien on such fee title.

11.6 Except as permitted by the City Documents, Trustor shall not subordinate the Ground Lease or Leasehold to any deed of trust or other encumbrance of, or lien on, any interest in the real property subject to such Leasehold without the prior written consent of Beneficiary. Any such subordination without such consent shall, at Beneficiary's option, be void.

11.7 Intentionally omitted.

11.8 Trustor shall notify Beneficiary promptly in writing of the institution of any legal proceeding involving obligations under the Ground Lease, and Beneficiary may intervene in any such legal proceeding and be made a party. Trustor shall promptly

provide Beneficiary with a copy of any decision rendered in connection with any such proceeding.

11.9 To the extent permitted by law, the price payable by Trustor or any other party in the exercise of the right of redemption, if any, from any sale under, or decree of foreclosure of, this Deed of Trust shall include all rents and other amounts paid and other sums advanced by Beneficiary on behalf of Trustor as the tenant under the Ground Lease.

11.10 Trustor shall promptly notify the landlord in writing, in accordance with Section 25359.7 of the California Health and Safety Code and any successor and/or similar statutes (and shall simultaneously notify Beneficiary in writing), in the event that Trustor knows or has cause to believe that any Hazardous Materials have come to be located on or beneath the property leased under the Ground Lease.

11.11 The generality of the provisions of this Deed of Trust shall not be limited by any provision of this Section 11 that sets forth particular obligations of Trustor as the tenant under the Ground Lease.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

TRUSTOR:

_____, L.P., a California limited partnership

By: _____

Its: General Partner

By: _____

Its: _____

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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, _____,
(Name of Notary)

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.

(Notary Signature)

SIGNATURES MUST BE NOTARIZED.

Exhibit A

LAND

The land referred to is situated in the County of Alameda, City of Pleasanton, State of California, and is described as follows:

DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

by and between

THE CITY OF PLEASANTON

and

SUNFLOWER IRBY LLC

Sunflower Hill

_____, 2018

THIS DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (this “**Agreement**”) is entered into effective as of _____, 2018 (“**Effective Date**”) by and between the City of Pleasanton, a municipal corporation (“**City**”) and Sunflower Irby LLC, a California limited liability company (“**Developer**”). The City and the Developer are collectively referred to herein as the “**Parties.**”

RECITALS

A. Pursuant to that certain Affordable Housing Agreement dated as of March 1, 2017, executed by and between the City and Irby Ranch LLC, a California limited liability company, and recorded in the Official Records on March 23, 2017 as Instrument No. 2017067946, the City has the right to acquire the real property located on Stanley Boulevard in the City of Pleasanton, California, consisting of approximately 1.64 acres, and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Developer has proposed the development of a 31-unit multi-family special needs rental housing development on the Property that will consist of 29 apartments that will be available at affordable rents to low-income households and two (2) manager’s units, and that will provide supportive services to the residents (the “**Project**”).

C. As authorized by City Council Resolution 17-918, the City entered into an Exclusive Negotiating Agreement dated as of March 6, 2017 and executed by and between the City and Sunflower Hill, Inc., a California nonprofit public benefit corporation affiliated with Developer, pursuant to which the City agreed to provide certain predevelopment financing for the Project.

D. At its meeting of February 7, 2017, the City Council made a finding that the Addendum to the Housing Element and Climate Action Plan General Plan Amendment and Rezonings Supplemental Environmental Impact Report (SEIR), and the previously prepared SEIR, including the adopted California Environmental Quality Act (CEQA) Findings and Statement of Overriding Considerations, are adequate to serve as the environmental documentation for the Project, and that all the requirements of CEQA and CEQA Guidelines Section 15162 have been satisfied.

E. Upon City’s acquisition of the Property, and upon satisfaction of the conditions precedent set forth in this Agreement, City will lease the Property to Developer for a term of seventy-five (75) years in accordance with, and upon the terms and conditions set forth in this Agreement, and will provide financing to assist in development of the Property.

F. Concurrently with the lease of the Property to Developer, among other documents, Developer will execute: a ground lease, a secured promissory note to evidence Developer’s obligation to repay the loan City will provide for the Project, a deed of trust that will provide City with a security interest in the Project and Developer’s leasehold interest in the Property, and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants that will require rents for the residential units in the Project to be affordable to low- and very low-income households for a term of not less than seventy-five (75) years. In

connection with predevelopment financing provided by the City, Developer has executed a loan agreement, a promissory note, and an assignment agreement pursuant to which City has been provided a security interest in the plans, studies and documents prepared using proceeds of the predevelopment loan.

G. A material inducement to City to enter into this Agreement is the agreement by Developer to develop the Project within the time periods specified herein and in accordance with the provisions hereof, and the City would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to take such actions and complete such work in accordance with such provisions and within such time periods.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

DEFINITIONS; EXHIBITS

1.1 Definitions. The following terms shall have the meanings set forth below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

“**Affordable Rent**” is defined in the Regulatory Agreement.

“**Applicable Laws**” is defined in Section 5.15.

“**Approved Partnership**” is defined in Section 7.3.

“**Area Median Income**” is defined in the Regulatory Agreement.

“**Assignment Agreement**” means that certain Assignment Agreement executed by Developer for the benefit of City pursuant to the Predevelopment Loan Agreement.

“**Authorized Representative**” means the City Manager of the City of Pleasanton, or his or her designee.

“**City**” means the City of Pleasanton, California, a municipal corporation.

“**City Council**” means the City Council of the City of Pleasanton, California.

“**City Documents**” means collectively, this Agreement, the Construction/Permanent Note, the Deed of Trust, the Regulatory Agreement, the Ground Lease, the Memorandum, the Predevelopment Note, the Predevelopment Loan Agreement, and the Assignment Agreement.

“City’s Permitted Exceptions” is defined in Section 3.7.

“Certificate of Completion” is defined in Section 5.12.

“Claims” is defined in Section 5.14.

“Closing Date” or **“Close of Escrow”** shall be the date that escrow closes for the lease of the Property to Developer.

“Conditions of Approval” is defined in Section 5.4.

“Construction/Permanent Loan” is defined in Section 4.1.

“Construction/Permanent Loan Proceeds” is defined in Section 4.2.2.

“Construction/Permanent Note” is defined in Section 4.1.

“Construction Plans” is defined in Section 5.6.

“Deed of Trust” means the leasehold deed of trust to be recorded against the Project and Developer’s leasehold interest in the Property to secure repayment of the Construction/Permanent Loan.

“Developer” means Sunflower Irby LLC, a California limited liability company.

“Developer’s Permitted Exceptions” is defined in Section 3.1.

“Environmental Laws” is defined in Section 6.11.2.

“Escrow Agent” is defined in Section 3.3.

“Excess Proceeds” is defined in Section 4.4.

“Financing Plan” is defined in Section 2.5.2.

“Hazardous Material” is defined in Section 6.11.1.

“Improvements” means the improvements to be constructed on the Property including without limitation, the residential dwelling units comprising the Project.

“Indemnites” is defined in Section 5.14.

“Lender’s Title Policy” is defined in Section 3.7.

“Memorandum” is defined in Section 3.7.

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

“**Owner’s Title Policy**” is defined in Section 3.8.

“**Partnership Agreement**” is defined in Section 7.3.

“**Predevelopment Loan**” means the loan in the amount of up to \$250,000 that City will provide to Developer pursuant to the Predevelopment Loan Agreement.

“**Predevelopment Loan Agreement**” means that certain Predevelopment Loan Agreement dated as of _____, 2018 and executed by and between City and Developer.

“**Predevelopment Note**” means the promissory note evidencing Developer’s obligation to repay the Predevelopment Loan.

“**Project**” is defined in Recital B.

“**Property**” is defined in Recital A and described in Exhibit A.

“**Regulatory Agreement**” is defined in Section 3.7.

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

“**Title Company**” is defined in Section 3.3.

“**Title Report**” is defined in Section 3.1.

“**Transfer**” is defined in Section 7.2.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

- A Legal Description of the Property
- B Form of Construction/Permanent Note
- C Form of Deed of Trust
- D Form of Regulatory Agreement
- E Financing Plan
- F Form of Certificate of Completion
- G Form of Ground Lease

ARTICLE II

REPRESENTATIONS; EFFECTIVE DATE; PROJECT SCOPE; FINANCING PLAN

2.1 Developer’s Representations. Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 to be untrue, Developer shall

immediately give written notice of such fact or condition to City. Developer acknowledges that City shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of City. Developer hereby represents, warrants, and covenants that the following are true and correct as of the Effective Date, and shall be true and correct as of the Closing Date.

(a) Organization. Developer is a limited liability company, duly organized and in good standing under the laws of the State of California. Developer's managing member is Satellite AHA Development, Inc., a nonprofit public benefit corporation, duly organized and in good standing under the laws of the State of California, tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and wholly controlled by Satellite Affordable Housing Associates, a California nonprofit public benefit corporation.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer pursuant to or in connection with this Agreement, and to perform and observe the terms and provisions of all of the foregoing

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer pursuant to or in connection with to this Agreement, have been executed and delivered, or will be executed and delivered, by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of such documents.

(d) Valid and Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered by Developer or will be executed and delivered by Developer pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute, legal, valid and binding obligations of Developer, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments executed and delivered by Developer, or to be executed or delivered by Developer pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) Pending Proceedings. Except as disclosed in writing to the City prior to execution of this Agreement, Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and, to the best of its knowledge, there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer or the Property, at law or in equity, before or by any court, board, commission or agency. Developer is not the subject of a bankruptcy or insolvency proceeding.

2.2 Effective Date. The obligations of Developer and City hereunder shall be effective as of the Effective Date which date is set forth in the preamble to this Agreement.

2.3 Project Scope. The Project will include the construction of thirty-one (31) units of multi-family rental housing on the Property consisting of twenty-two (22) one-bedroom units, seven (7) two-bedroom units, one (1) studio staff unit, one (1) two-bedroom manager's unit, common facilities including a community center of up to 5,000 square feet in size that may serve both the residents of the Project and other members of the community, and thirty-one (31) surface parking spaces. All of the residential units except the staff unit and the manager's unit will be subject to affordability and occupancy restrictions in accordance with the Regulatory Agreement. The Project will serve households that include one or more members that have a developmental disability as defined in subdivision 4512(a) of the California Welfare and Institutions Code, and Developer will be required to provide or arrange for the provision of supportive services to the residents.

2.4 Design Review; Conditions of Approval; Environmental Review. Developer will submit design documents for the Project including a site plan, elevations and schematic drawings for the Project for review and approval by the City Planning Commission or City Council, as applicable. If the City does not approve any submittal, Developer shall submit revised design documents that address the City's objections. Developer agrees that it shall construct the Project in accordance with the approved design documents.

At its meeting of February 7, 2017, the City Council made a finding that the Addendum to the Housing Element and Climate Action Plan General Plan Amendment and Rezonings Supplemental Environmental Impact Report (SEIR), and the previously prepared SEIR, including the adopted California Environmental Quality Act (CEQA) Findings and Statement of Overriding Considerations, are adequate to serve as the environmental documentation for the proposed Project, and that all the requirements of CEQA and CEQA Guidelines Section 15162 have been satisfied.

In the event that the proposed Project is modified or other circumstances arise that would affect the Project's eligibility for exemption from CEQA review, prior to submitting an application for land use approvals for the Project, Developer shall cause to be performed any additional environmental studies required by the City in connection with environmental review of the Project in accordance with CEQA. Developer acknowledges that the environmental review process under CEQA may involve preparation and consideration of additional information, as well as consideration of input from interested organizations and individuals; that approval or disapproval of the Project following completion of the environmental review process is within the sole and absolute discretion of the City without limitation by or consideration of the

terms of this Agreement; and that the City makes no representation regarding the ability or willingness of the City to approve the Project at the conclusion of the environmental review process required by CEQA, or regarding the imposition of any mitigation measures as conditions of any approval that may be granted. The Parties recognize that, as a result of the environmental review process, the City has the absolute discretion and right to terminate this Agreement by written notice to Developer delivered prior to the Close of Escrow, and no cost shall be incurred by the City as a result of such termination. In addition, Developer acknowledges that any required approvals by any other local, state or federal agency may require additional environmental review, and that any approval by the City shall not bind any other local, state or federal agency to approve the Project or to impose mitigation measures that are consistent with the terms of this Agreement or with the terms of any mitigation measures required by the City pursuant to the City's environmental review. Prior to the Close of Escrow, Developer shall have the right to terminate this Agreement by delivery of written notice to City if the City disapproves the Project following completion of the environmental review process or Developer determines that implementation of any required environmental mitigation measures would cause development of the Project to become economically infeasible. Upon termination of this Agreement in accordance with this Section, the City shall forgive the outstanding balance of the Predevelopment Loan.

2.5 Financing Plan.

2.5.1 Preliminary Financing Plan. As described in Exhibit E, Developer has preliminarily proposed financing the Project with a combination of a commercial construction loan that will convert to a permanent loan upon completion of construction, a loan of Alameda County Proposition 1A funds in the approximate amount of _____ Dollars (\$ _____), a Federal Home Loan Bank Affordable Housing Program loan, the City Construction/Permanent Loan, and equity contributions from state and federal low-income housing tax credit investors.

2.5.2 Revised Financing Plan. Developer shall submit for City review and approval Developer's revised plans for construction and permanent financing of the Project (the "**Financing Plan**"). The Financing Plan shall indicate all sources of funds necessary to pay, when due, the estimated costs of the Project, including without limitation acquisition costs and hard and soft construction costs, and shall be accompanied by evidence that all such funds are subject to binding commitments, in form acceptable to City, from Developer, equity investors, and lenders, subject only to commercially reasonable conditions. The Financing Plan shall include development and operating pro formas which set out in detail Developer's plan for financing the costs of acquisition, construction and operation of the Project.

City staff shall review the proposed Financing Plan, and acting through the Authorized Representative, the City shall approve such plan in writing within fifteen (15) business days following receipt provided that the plan conforms to the requirements of this Section. If the City does not approve the Financing Plan, the City shall set forth its objections in writing and notify Developer of the reasons for its disapproval. If the City does not approve or provide written objections to Developer within such fifteen (15) business day period, the Financing Plan shall be deemed rejected. Developer shall thereafter submit a revised Financing Plan that addresses the reasons for disapproval, and the City shall grant Developer a reasonable

extension of the time deadlines set forth in this Agreement as required to restructure the Financing Plan, subject to the outside time limit for completion set forth in Section 5.1 below. City's approval of the Financing Plan shall be a condition precedent to City's obligation to lease the Property to Developer. The approved Financing Plan shall be attached to this Agreement as Exhibit E. The terms set forth in the body of this Agreement shall prevail in the event of a conflict between the information set forth in the Financing Plan and the terms set forth in the body of this Agreement.

2.5.2.1 Tax Credit Funds. Developer will use best efforts to submit an application to TCAC for a preliminary tax credit reservation for the Project by June 30, 2018, but in no event later than TCAC's second round for 2019. Developer will submit applications to TCAC for a preliminary tax credit reservation for the Project in up to three consecutive rounds, if necessary to secure a tax credit allocation. Upon award of a preliminary reservation from TCAC, Developer shall exercise diligent good faith efforts to obtain a funding commitment from a reputable equity investor. Procurement of a TCAC preliminary reservation and receipt of an equity investor's funding commitment reasonably acceptable to City shall be conditions precedent to the City's obligation to lease the Property to Developer.

If Developer does not receive an allocation of tax credits after applying in three consecutive TCAC rounds, but in no event later than the second round of 2019, unless the Parties agree to an alternative financing plan for the Project, the City shall have the right, by delivery of written notice to Developer, to terminate any obligation that may be construed to have arisen under this Agreement relating to the leasing of the Property or financing the Project.

2.5.3 Modifications. Proposed modifications to the Financing Plan shall be submitted to the City for review and approval. City staff shall promptly review such proposed modifications, and acting through its Authorized Representative, the City shall approve such modifications in writing within fifteen (15) business days following receipt provided that the modifications conform to the requirements of this Agreement. If the City does not approve proposed modifications, the City shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit a revised Financing Plan that addresses the reasons for disapproval. If the City does not approve or provide written objections to Developer within such fifteen (15) business day period, the proposed modifications shall be deemed rejected.

2.5.4 Loan and Grant Documents; Partnership Agreement. Developer shall submit to the City for its review and approval, copies of all loan and/or grant documents for the financing sources identified in the Financing Plan, and, if the Project will be conveyed to an Approved Partnership, copies of the Partnership Agreement and related documents.

ARTICLE III

GROUND LEASE OF THE PROPERTY; CONDITIONS PRECEDENT TO CLOSING

3.1 Ground Lease of the Property. Provided that all conditions precedent set forth in this Agreement have been satisfied or waived, City shall lease the Property to Developer in accordance with and subject to the terms, covenants and conditions of this Agreement and the Ground Lease, free and clear of all exceptions to title except: (a) the provisions and effects of the City Documents, (b) applicable building and zoning laws and regulations, (c) any lien for current taxes and assessments or taxes and assessments accruing subsequent to conveyance of the Property pursuant to the Ground Lease, (d) exceptions as shown on the preliminary title report for the Property (“**Title Report**”) as reasonably approved by Developer, and (e) such other conditions, liens, encumbrances, restrictions, easements and exceptions as Developer may approve in writing, which approval shall not be unreasonably withheld. All of the foregoing are collectively hereinafter referred to as “**Developer’s Permitted Exceptions.**”

3.2 Intentionally omitted.

3.3 Escrow. City and Developer shall open escrow at the office of _____ Title Company located at _____, California, or such other title company as the Parties may agree upon (“**Escrow Agent**” or “**Title Company**”) in order to consummate the lease of the Property to Developer and the closing of escrow for the transactions contemplated hereby.

3.4 Costs of Closing and Escrow. Developer shall pay all title insurance premiums for policies Developer elects to purchase in connection with the acquisition of a leasehold interest in the Property and the financing of the Project, and Developer shall pay all recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the acquisition of the leasehold interest in the Property and the financing of the Project. Developer shall pay for the cost of any lender’s policy of title insurance that City elects to acquire in connection with the transactions contemplated hereby. Property taxes and assessments shall be prorated as of the Closing Date. City and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as City or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by City and Developer, shall serve as escrow instructions for the Closing. Developer’s expenses described in this Section may be paid with proceeds of the Predevelopment Loan, the Construction/Permanent Loan, or by other sources of financing.

3.5 Closing. The Closing Date shall be a date that is mutually acceptable to the Parties, consistent with Section 5.1, and which shall occur within thirty (30) days following the Developer’s satisfaction or City’s waiver of all conditions precedent to the leasing of the Property as set forth in Sections 3.7 and 3.8. Prior to the Close of Escrow, Developer shall deposit into escrow the City Documents to which Developer is a party, executed and acknowledged as applicable, and Developer’s share of closing costs. Provided that all conditions precedent to Close of Escrow have been satisfied or waived, City shall deposit into escrow executed copies of the City Documents to which City is a party. On the Closing Date, the Escrow Agent shall cause the Memorandum, the Deed of Trust, and the Regulatory Agreement to be recorded in the Official Records.

3.6 Review of Title. City shall cause Title Company to provide Developer with a copy of the Title Report within sixty (60) days following the Effective Date. Developer shall

notify City of any objections Developer has to exceptions to title (“**Title Exceptions**”) within ten (10) business days following Developer’s receipt of the Title Report. Developer’s failure to object within such period shall be deemed to be approval of the condition of title to the Property. If Developer objects to any Title Exception, City shall use reasonable efforts at City’s expense to remove from title or otherwise satisfy each such exception in a form that is reasonably satisfactory to Developer no later than fourteen (14) days prior to the Closing Date.

3.7 City’s Conditions to Closing. City’s obligation to lease the Property to Developer is conditioned upon the satisfaction of the terms and conditions set forth in this Section 3.7, unless any such condition is waived in writing by the City acting in the discretion of its Authorized Representative. Additional requirements pertaining to disbursement of loan proceeds are set forth in Section 4.7.

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other City Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Developer contained herein or in any other City Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow.

(c) Due Authorization and Good Standing. Developer shall have delivered to City copies of all of the following, including updated versions of any of the following that have been amended or modified since the date of delivery to City pursuant to Section 4.7.2: (i) a certificate of good standing, certified by the Secretary of State, indicating that Developer is properly organized and authorized to do business in the State of California; (ii) copies of Developer’s articles of organization and operating agreement, each certified by Developer’s managing member as accurate, complete, and in full force and effect; (iii) verification of Developer’s tax-exempt status; and (iv) a resolution certified by Developer’s managing member authorizing Developer’s execution of and performance under this Agreement and the other City Documents.

(d) Partnership Documents. If the Project will be developed by an Approved Partnership: Developer shall have delivered and City shall have approved the Partnership Agreement (as amended); Developer shall have delivered the Approved Partnership’s LP-1 and good standing certificate (each as updated); for the General Partners of the Approved Partnership, Developer shall have delivered a good standing certificate, certified articles of incorporation/LLC-1, certified bylaws/operating agreement, and certified resolutions authorizing the Approved Partnership to enter into the transactions contemplated hereby and to execute the City Documents, and as applicable, amendments thereto; and Developer shall have delivered an assignment and assumption agreement in form approved by City pursuant to which the Approved Partnership shall have assumed Developer’s obligations under this Agreement.

(e) Execution, Delivery and Recordation of Documents. Developer (or as Applicable, the Approved Partnership) shall have executed, acknowledged as applicable, and

delivered to City this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation the Construction/Permanent Note, a leasehold deed of trust substantially in the form attached hereto as Exhibit C to secure repayment of the Construction/Permanent Note (the “**Deed of Trust**”), an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit D (the “**Regulatory Agreement**”), a ground lease substantially in the form attached hereto as Exhibit G (the “**Ground Lease**”) and a Memorandum of the Ground Lease substantially in the form attached as an exhibit to the Ground Lease (the “**Memorandum**”). Concurrently with the Closing, the Memorandum, the Deed of Trust, and the Regulatory Agreement shall be recorded in the Official Records.

(f) Lender’s Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an ALTA Lender’s Policy of Title Insurance for the benefit and protection of City (“**Lender’s Title Policy**”) in the amount of the Construction/Permanent Loan, insuring that the Memorandum, the Deed of Trust and the Regulatory Agreement are recorded subject only to title exceptions and such other defects, liens, conditions, encumbrances, restrictions, easements and exceptions as City may reasonably approve in writing (collectively, “**City’s Permitted Exceptions**”) and containing such endorsements as City may reasonably require.

(g) Financing Plan. City shall have approved the Financing Plan, including without limitation, the construction and operating budgets for the Project.

(h) Approval of Financing Documents; Evidence of Availability of Funds. City shall have approved the Partnership Agreement if the Project will be conveyed to an Approved Partnership, and shall have approved the loan and grant documents for all financing sources for the Project. All other sources of construction financing for the Project shall have closed or shall close concurrently with the closing for the lease of the Property, and Developer shall have provided evidence reasonably satisfactory to City that (i) all conditions to the release and expenditure of the initial draw of funds from each source described in the approved Financing Plan as a source of construction financing for the Project have been met and that such funds will be available, and (ii) all construction financing (including draws subsequent to the initial draw of funds) will be available upon the satisfaction of the conditions set forth in the applicable documents.

(i) Construction Contract, Plans, Budget and Schedule. City shall have approved the general contractor, the construction budget and schedule, and the construction contract for the Project, and City shall have approved the final Construction Plans and specifications for the Project. Developer shall have delivered an executed copy of the construction contract for the Project to the City. If City has not provided written objections to Developer regarding the general contractor, the construction budget and schedule, or the construction contract for the Project within fifteen (15) business days following their submittal to the City, such items shall be deemed to have been approved.

(j) Permits. Developer shall have delivered evidence satisfactory to City that Developer has obtained all permits (including without limitation building permits) required to

construct the Project, or that the receipt of such permits is subject only to such conditions as City shall reasonably approve.

(k) Insurance; Payment and Performance Bonds. Developer shall have provided evidence satisfactory to City that Developer has obtained insurance coverage meeting the requirements set forth in Article X, and shall have provided to City copies of payment bonds and performance bonds pursuant to Section 5.18.

(l) Mechanics' Liens. Developer's delivery to City of evidence reasonably satisfactory to City that there are no mechanics' liens or stop notices related to the Property or the Project, and Developer's provision to City of full waivers or releases of lien claims if required by City.

(m) Other Documents. Developer's delivery to City, and City approval of such other documents related to the development and financing of the Project as City may reasonably request.

3.8 Developer's Conditions to Closing. Developer's obligation to proceed with the acquisition of a leasehold interest in the Property is subject to the satisfaction or Developer's waiver of the following conditions:

(a) No Default. City shall not be in default under the terms of this Agreement, and all representations and warranties of City contained herein shall be true and correct in all material respects;

(b) Execution of Documents. City shall have executed and acknowledged the Memorandum, the Regulatory Agreement, and all other City Documents to which the City is a party, and shall have delivered such documents into escrow; and

(c) Owner's Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an Owner's Title Insurance Policy for the benefit and protection of Developer ("**Owner's Title Policy**") showing title to the Property vested in Developer, subject only to Developer's Permitted Exceptions and containing such endorsements as Developer may reasonably require, with the cost of such Owner's Title Policy to be paid by Developer.

ARTICLE IV

CITY FINANCIAL ASSISTANCE

4.1 Construction/Permanent Loan. In order to increase the affordability of the Project, upon satisfaction of the conditions precedent set forth herein in Sections 3.7 and 4.7.2, City agrees to provide to Developer construction/permanent financing in the amount of Two Million Dollars (\$2,000,000) (the "**Construction/Permanent Loan**") upon the terms and conditions and for the purposes set forth in this Agreement. Developer's obligation to repay the Construction/Permanent Loan shall be evidenced by a promissory note executed by Developer substantially in the form attached hereto as Exhibit B (the "**Construction/Permanent Note**"). At

the Closing for lease of the Property to Developer, the outstanding balance of the Predevelopment Loan shall be rolled over and included in the principal amount of the Construction/Permanent Note so that the initial principal balance of the Construction/Permanent Note shall equal the sum of Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000).

4.2 Loan Terms; Use of Proceeds. Provided that Developer has complied with all applicable conditions precedent to disbursement set forth in Section 4.7.2, the proceeds of the Construction/Permanent Loan (“**Construction/Permanent Loan Proceeds**”) will be disbursed pursuant to approved draw requests as described in Paragraph (h) of Section 4.7.2. The outstanding principal balance of the Construction/Permanent Note will bear interest at a rate equal to three percent (3%) simple annual interest. Annual payments shall be due and payable on a residual receipts basis in accordance with the formula set forth in the Construction/Permanent Note. The entire outstanding principal balance of the Construction/Permanent Loan together with accrued interest and all other sums due under the City Documents shall be payable in full on the date which is the earlier of (i) the fifty-fifth (55th) anniversary of the date the City issues the final certificate of occupancy or equivalent for the Project, or (ii) the fifty-seventh (57th) anniversary of the Construction/Permanent Loan origination date. Except as expressly provided in the Construction/Permanent Note, the Construction/Permanent Loan shall be non-recourse to Developer.

4.3 Intentionally omitted.

4.4 Cost Savings. Within thirty (30) days after the limited partner pays its capital contribution following issuance of the 8609 for the Project, Developer shall pay to the City as a reduction of the outstanding principal balance of the Construction/Permanent Note, a one-time payment in the amount of Excess Proceeds. “**Excess Proceeds**” shall mean the sum of all sources of financing received by Developer for construction and permanent financing of the Project, less the sum of actual uses as shown on the final cost certificate for the Project. Prior to calculating Excess Proceeds, the following payments and adjustments shall be made in the following order of priority: (i) the Project replacement reserve shall be funded in an amount agreed upon by the Parties and specified in the Construction/Permanent Note; (ii) the Project operating reserve shall be funded in an amount agreed upon by the Parties and specified in the Construction/Permanent Note but not greater than three (3) months’ projected Project operating expenses; and (iii) such other expenses agreed upon by the Parties and specified in the Construction/Permanent Note. In the event that other public agency lenders require payment of Excess Proceeds, then Excess Proceeds shall be payable to City and such other public agencies in proportion to the amount of financing each agency provides for development of the Project.

4.5 Security. Repayment of the Construction/Permanent Note shall be secured by a leasehold deed of trust that will be executed by Developer for the benefit of City substantially in the form attached hereto as Exhibit C and recorded against the Property at the Closing. The Deed of Trust may be subordinated only to such liens and encumbrances consistent with the approved Financing Plan as City shall approve in writing consistent with Section 8.2.

4.6 Prepayment; Acceleration.

(a) Prepayment. Developer shall have the right to prepay the

Construction/Permanent Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Developer's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

(b) Due On Transfer or Encumbrance. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Construction/Permanent Note shall be due and payable upon the Transfer absent the prior written consent of City of all or any part of or interest in the Property or the Project except as otherwise permitted pursuant to this Agreement.

(c) Default. The City shall have the right to accelerate the Maturity Date and declare all sums payable under the Construction/Permanent Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an Event of Developer Default.

4.7 Conditions to Disbursement of Loan Proceeds.

4.7.1 Intentionally omitted.

4.7.2 Conditions to Disbursement of Construction/Permanent Loan Proceeds. City's obligation to disburse the proceeds of the Construction/Permanent Loan is conditioned upon the satisfaction of all of the following conditions:

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other City Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Developer contained herein or in any other City Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow.

(c) Due Authorization and Good Standing. Developer shall have delivered to City: (i) a certificate of good standing, certified by the Secretary of State, indicating that Developer is properly organized and authorized to do business in the State of California; (ii) copies of Developer's articles of organization and operating agreement, each certified by Developer's managing member as accurate, complete, and in full force and effect; (iii) verification of Developer's tax-exempt status; and (iv) a certified resolution authorizing Developer's execution of and performance under this Agreement and the other City Documents.

(d) Loan Documents. Developer's execution and delivery of the Construction/Permanent Note, the Deed of Trust, and all other City Documents to which Developer is a party;

(e) Documents. Developer's delivery to City, and City approval of such other documents related to the development and financing of the Project as City may reasonably request, including without limitation, an agreement with an agency that will refer Eligible Households for prospective occupancy of the residential units in the Project;

(f) The satisfaction of all conditions set forth in Section 3.7;

(g) Escrow for the leasing of the Property to Developer shall have closed or shall close concurrently with the first disbursement; and

(h) Requisition. City's receipt of a written requisition from Developer specifying the amount and use of the requested funds, accompanied by copies of third-party invoices, evidence of Developer's payment for services rendered in connection with the work (if applicable), and such other documentation as City may reasonably require, and if applicable, City's inspection and approval of the work that is the subject of the requisition. If City has not approved a requisition within ten (10) business days following its submittal, the requisition shall be deemed rejected.

4.8 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse or authorize the disbursement of any portion of the Construction/Permanent Loan Proceeds following:

(i) the failure of any of Developer's representations and warranties made in this Agreement or in connection with this Agreement to be true and correct in all material respects;

(ii) the termination of this Agreement; or

(iii) the occurrence of an Event of Default under any City Document which remains uncured beyond any applicable cure period, or the existence of any condition, event or act which upon the giving of notice or the passage of time or both would constitute an Event of Default under any City Document.

4.9 Assumption of Obligations by Approved Partnership. If Developer proposes to transfer its rights under this Agreement to an Approved Partnership, then upon satisfaction of the requirements set forth in Section 7.4, the Approved Partnership shall: (i) assume Developer's obligations under this Agreement and the other City Documents pursuant to an assignment and assumption agreement in form approved by City, or in City's discretion, an amended and restated version of this Agreement, and (ii) execute and deliver such additional instruments as City shall reasonably require, including without limitation, an amended and restated promissory note and amended and restated deed of trust (or amendments thereto) to evidence such entity's obligation to repay the Construction/Permanent Loan and to secure repayment of the Construction/Permanent Loan by the Project and the leasehold estate in the Property.

ARTICLE V

DEVELOPMENT AND USE OF THE PROPERTY

5.1 Development Schedule. Subject to force majeure, Developer shall commence construction of the Project by not later than _____, 20__, and shall diligently prosecute to completion the construction of the Project to enable City to issue final certificates of occupancy for all residential units in the Project within eighteen (18) months following commencement of construction. Developer shall use diligent and commercially reasonable efforts to perform Developer's obligations under this Agreement within the times periods set forth herein, and if no such time is provided, within a reasonable time, designed to permit issuance of final certificates of occupancy for all residential units in the Project by the date specified in this Section 5.1. Subject to force majeure and the City's issuance of permits and approvals, Developer's failure to commence or complete construction of the Project in accordance with the time periods specified in this Section 5.1 shall be an Event of Developer Default hereunder.

5.2 Cost of Construction. Except as expressly set forth herein, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of a leasehold interest in the Property, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. Except as expressly set forth herein, all costs of designing, developing and constructing the Project and compliance with the Conditions of Approval, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Developer and shall not be an obligation of the City. Developer's expenses described in this Section may be paid with proceeds of the Predevelopment Loan, the Construction/Permanent Loan, or by other sources of financing.

5.3 Permits and Approvals; Payment of Fees; Cooperation. Developer acknowledges that the execution of this Agreement by the City does not constitute City approval for the purpose of the issuance of building permits, does not relieve Developer from the obligation to apply for and to obtain from the City and all other agencies with jurisdiction over the Property, all necessary approvals, entitlements, and permits for the construction of the Project (including without limitation the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the development of the Property (if any), and the approval of the Project in compliance with CEQA and if applicable, NEPA), nor does it limit in any manner the discretion of the City or any other agency in the approval process. Prior to the Close of Escrow for the Project, Developer shall have obtained all entitlements, permits, licenses and approvals required for the construction of the Project, including without limitation, building permits and use permits or shall provide evidence satisfactory to City that receipt of such permits and approvals is subject only to such conditions as City may reasonably approve. Developer shall pay when due all customary and reasonable fees and charges in connection with the processing of all applicable permits and approvals. Developer shall not commence construction work on the Project prior to issuance of building permits required for such work. City staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the development and operation of the Project as contemplated by this Agreement.

5.4 Conditions of Approval. Developer shall develop the Property in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the “**Conditions of Approval**”).

5.5 Fees. Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City and all other agencies with jurisdiction over development of the Property in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project. Developer’s expenses described in this Section may be paid with proceeds of the Predevelopment Loan or by other sources of financing.

5.6 Construction Plans. Developer shall submit to City’s Building Division detailed construction plans for the Project (the “**Construction Plans**”). As used herein “**Construction Plans**” means all construction documents upon which Developer and Developer’s contractors shall rely in constructing the Project (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the scope of development set forth herein and upon the approvals issued by the City for the Project, and shall not materially deviate therefrom without the express written consent of City.

5.7 Construction Pursuant to Plans. Developer shall develop each component of the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to the Project. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work 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. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

5.8 Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the City for its written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by the City after the Effective Date. Unless a proposed change is approved by City within thirty (30) days, it shall be deemed rejected. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any

change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

5.9 Rights of Access. For the purpose of ensuring that the construction of the Project is completed in compliance with this Agreement, Developer shall permit representatives of the City to enter upon the Property following 24 hours written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided).

5.10 City Disclaimer. Developer acknowledges that the City is under no obligation, and the City neither undertakes nor assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the City as to the quality of the design or construction of the Project or otherwise.

5.11 Defects in Plans. The City shall not be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that City does not, and shall not, waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. Developer's indemnification obligations pursuant to this Section shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees.

5.12 Certificate of Completion for Project. Promptly after completion of construction of the Project, issuance of a final Certificate of Occupancy by the City for all residential units in the Project, and the written request of Developer, the City will provide a certificate substantially in the form attached hereto as Exhibit F ("**Certificate of Completion**") so certifying, provided that at the time such certificate is requested all applicable work has been completed for the Project. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the construction of the Project. At Developer's option the Certificate of Completion shall be recorded in the Official Records. The Certificate of Completion shall not

constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement.

5.13 Equal Opportunity. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction work on the Property, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

5.14 Prevailing Wage Requirements. Developer and its contractors, subcontractors and agents shall pay prevailing wages for all construction work related to the Project, and shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (and if applicable due to financing sources used for the Project, the federal Davis Bacon Act and implementing regulations) (all of the foregoing, collectively, “**Prevailing Wage Laws**”), and shall be responsible for carrying out the requirements of such provisions. If applicable, Developer shall submit to City a plan for monitoring payment of prevailing wages and at Developer’s expense shall implement such plan and comply with all applicable reporting and recordkeeping requirements.

Developer shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (all of the foregoing, collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in connection with the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer’s deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section 5.14 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer’s indemnification obligations set forth in this Section shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees.

5.15 Compliance with Laws. Developer shall carry out and shall cause its contractors and subcontractors to carry out the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations (“**Applicable Laws**”), including without limitation, all applicable federal and state labor laws and standards, Section 3 of the Housing and Community Development Act of 1974, as amended (if applicable pursuant to financing sources used for the Project), applicable provisions of the California Public Contracts Code, the City’s zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City’s Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Developer shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Developer’s obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer’s deposit with City of any of the insurance policies described in this Agreement. Developer’s indemnification obligations set forth in this Section shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. Developer’s defense and indemnification obligations set forth in this Section 5.15 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project.

5.16 Liens and Stop Notices. Developer shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting the Project or the Property or any part thereof, Developer shall within twenty (20) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

5.17 Right of City to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property or any part thereof pursuant to and within the time period set forth in Section 5.16 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer’s expense and without further notice to Developer and all sums advanced by City for such purpose shall be part of the indebtedness secured by the Deed of Trust. In such event Developer shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Developer to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Property for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property. The City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property.

5.18 Performance and Payment Bonds. Prior to commencement of construction work on the Project, Developer shall cause its general contractor to deliver to the City copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of such Project component. The bonds shall name the City as co-obligee.

5.19 Insurance Requirements. Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article X.

5.20 Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that the Property will be subject to recorded covenants that will restrict use of the Property to operation of an affordable rental residential development and that for a term of not less than seventy-five (75) years commencing upon the issuance of the final certificate of occupancy for the Project, not less than six (6) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than twenty percent (20%) of Area Median Income, not less than an additional three (3) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than forty percent (40%) of Area Median Income, not less than an additional fourteen (14) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than fifty percent (50%) of Area Median Income, and not less than an additional six (6) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than sixty percent (60%) of Area Median Income. Two (2) residential units shall be manager/staff units that will not be subject to rent or occupancy restrictions. Developer shall comply with rent and occupancy restrictions imposed by all applicable financing sources and regulatory agencies if such agencies impose requirements on the Project that are more stringent than those set forth in this Agreement. Developer shall be obligated to contract with a qualified organization or agency that will provide referrals of Eligible Households for prospective occupancy of the residential units in the Project. In addition, Developer will be obligated to provide, or contract with a qualified organization for provision of supportive social services to the Project residents.

5.21 Intentionally omitted.

5.22 Intentionally omitted.

5.23 Maintenance. Commencing upon Developer's acquisition of a leasehold interest in the Property, Developer shall at its own expense, maintain the Property and the Improvements, including the landscaping and common areas, in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all Applicable Laws. Without limiting the foregoing, Developer agrees to maintain the Property and the Improvements (including without limitation, landscaping, driveways, parking areas, and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property. Developer shall prevent and/or rectify any physical deterioration of the Improvements and shall make all repairs, renewals and replacements necessary to keep the Property and the Improvements in good condition and repair.

5.24 Taxes and Assessments. Commencing upon Developer's acquisition of a leasehold interest in the Property, Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property and/or the Improvements, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property or Improvements; provided, however, Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

5.25 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Improvements, or part thereof, nor shall Developer or any person claiming under or through Developer 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 in, of, or for the Property or Improvements, or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith. Nothing in this Section 5.25 is intended to prevent the reservation of residential units in the Project for occupancy by households that include one or more members that have a developmental disability as defined in subdivision 4512(a) of the California Welfare and Institutions Code.

All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) In Deeds, the following language shall appear:

“(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee 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 in the property herein conveyed. The foregoing covenant shall run with the land.

“(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(b) In Leases, the following language shall appear:

“(1) The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee 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 herein leased.

“(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(c) In Contracts pertaining to operation or management of the Project, the following language shall appear:

“There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.”

ARTICLE VI

CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

6.1 Access to Site; Inspections. Prior to the Close of Escrow, Developer and Developer’s authorized representatives may enter upon and conduct reviews and assessments of the physical and environmental condition of the Property and the condition of the existing improvements (if any). City may require Developer to execute a right of entry agreement

satisfactory to City prior to entry onto the Property for such purpose and shall require Developer to provide proof of liability insurance acceptable to City. Developer's inspection, examination, survey and review of the Property shall be at Developer's sole expense. Developer shall provide City with copies of all reports and test results promptly following completion of such reports and testing. Developer hereby agrees to notify the City twenty four (24) hours in advance of its intention to enter the Property and will provide workplans, drawings, and descriptions of any intrusive sampling it intends to do. Developer must keep the Property in a safe condition during its entry. Developer shall repair, restore and return the Property to its condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer will not permit any mechanics liens, stop notices or other liens or encumbrances to be placed against the Property prior to Close of Escrow. Without limiting any other indemnity provisions set forth in this Agreement, Developer shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 6.1 except to the extent arising from the gross negligence or willful misconduct of the Indemnitees. Developer's indemnification obligations set forth in this Section 6.1 shall survive the Close of Escrow and the termination of this Agreement.

6.2 Environmental Disclosure. To the extent the City has copies of investigation reports concerning the Property, it will provide copies to Developer upon request; but the Parties acknowledge that City will not be conducting a public records search of any regulatory agency files—although the City urges Developer to do so to satisfy itself regarding the environmental condition of the Property. By execution of this Agreement, Developer: (i) acknowledges its receipt of the foregoing notice respecting the environmental condition of the Property; (ii) acknowledges that it will have an opportunity to conduct its own independent review and investigation of the Property prior to the Close of Escrow; (iii) agrees to rely solely on its own experts in assessing the environmental condition of the Property and its sufficiency for its intended use; and (iv) waives any and all rights Developer may have to assert that the City failed to disclose information about the environmental condition of the Property.

6.3 Property Leased "AS IS." Developer specifically acknowledges that the City will lease the Property to Developer on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from City, its employees, board members, agents, or brokers as to any matters concerning the Property. The City makes no representations or warranties as to any matters concerning the Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Property, including, but not limited to, appurtenances, access, landscaping, and parking facilities, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iv) 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, (v) the zoning or other legal status of the property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or

removal of Hazardous Material, substances or wastes on, under or about the Property or the adjoining or neighboring property; (viii) the quality of any labor and materials used in any improvements on the Property, or (ix) the condition of title to the Property.

6.4 Developer to Rely on Own Experts. Developer understands that notwithstanding the delivery by City to Developer of any materials, including, without limitation, third party reports, Developer will rely entirely on Developer's own experts and consultants and its own independent investigation in proceeding with the acquisition of a leasehold interest in the Property.

6.5 Release by Developer. Effective upon the Close of Escrow for the lease of the Property, Developer WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES the Indemnitees and any person acting on behalf of the City, from any and all Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Developer now has or which may arise in the future on account of or in any way arising out of or in connection with the physical condition of the Property, the presence of Hazardous Material in, on, under or about the Property, or any law or regulation applicable thereto including, without limiting the generality of the foregoing, all Environmental Laws.

DEVELOPER ACKNOWLEDGES THAT DEVELOPER IS FAMILIAR WITH SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, DEVELOPER EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Developer's initials: _____

6.6 Developer's Post-Closing Obligations. Developer hereby covenants and agrees that:

(1) Developer shall not knowingly permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material or otherwise knowingly permit the presence or release of Hazardous Material in, on, under, about or from the Property with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, use or maintenance of residential properties similar in nature to the Project, and used, stored and disposed of in compliance with Environmental Laws.

(2) Developer shall keep and maintain the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Environmental Laws.

(3) Upon receiving actual knowledge of the same, Developer shall immediately advise City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against the Developer or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material; (iii) the presence or release of any Hazardous Material in, on, under, about or from the Property; or (iv) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Environmental Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims**". The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.

(4) Without the City's prior written consent, which shall not be unreasonably withheld or delayed, Developer shall not take any remedial action in response to the presence of any Hazardous Material in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim. City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer.

6.7 Environmental Indemnity. To the greatest extent allowed by law, Developer shall indemnify, defend (with counsel approved by City) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Material on, under, in or about the Property, or the transportation of any such Hazardous Material to or

from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of or as the invitee of any of the foregoing to comply with Environmental Laws, except to the extent caused by the City's gross negligence or willful misconduct. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Material, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws.

Developer's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting City's recourse to property securing the Secured Obligations (as defined in the Deed of Trust), or limiting the personal liability of Developer, or any other party for payment of all or any part of the Predevelopment Loan or the Construction/Permanent Loan; (iv) the accuracy or inaccuracy of any representation and warranty made by Developer under this Agreement or by Developer or any other party under any City Document, (v) the release of Developer or any other person, by City or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for the Predevelopment Loan or the Construction/Permanent Loan; and (vii) City's failure to properly perfect any lien or security interest given as security for the Predevelopment Loan or the Construction/Permanent Loan.

The provisions of this Section 6.7 shall be in addition to any and all other obligations and liabilities that Developer may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether City or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the City Documents or applicable law. The obligations of Developer to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Predevelopment Loan or the Construction/Permanent Loan, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

6.8 Developer Representations. Developer represents and warrants to City that except as disclosed to City in writing, Developer has no knowledge, and has received no notice regarding the presence of Hazardous Materials in, on, under, or about the Property.

6.9 City's Rights. 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 City's or the Trustee's rights and remedies under the Deed of Trust, the City 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 Developer to judgment, and (b) any other rights and remedies permitted by law. For purposes of

determining the City's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Developer 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 Developer 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 City 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 default rate specified in the Construction/Permanent Note, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the City upon its demand made at any time following the conclusion of such action.

6.10 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement are in no way limited or otherwise affected by any information the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Material, whether the City obtained such information from the Developer or from its own investigations.

6.11 Definitions.

6.11.1 "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

6.11.2 "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), 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.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et*

seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

ARTICLE VII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its principals are of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to the expiration of the term of the Regulatory Agreement, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of City which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the City’s consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual residences to tenants for occupancy as their principal residence in accordance with the Regulatory Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction

or permanent financing of the Project in accordance with the approved Financing Plan as it may be updated with City approval, and subject to the requirements of Article VIII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a Transfer to a tax-exempt entity under the direct control of or under common control with Developer; (vi) a Transfer to a limited partnership (or a limited liability company) in which Developer or a tax-exempt affiliate of Developer is the managing general partner (or managing member) (“**Approved Partnership**”); (vii) the admission of limited partners (or non-managing members), and any transfer of limited partnership (or non-managing member) interests in accordance with the Approved Partnership’s agreement of limited partnership (or operating agreement) (the “**Partnership Agreement**”); (viii) the removal of the general partner (or managing member) of an Approved Partnership by the investor limited partners (or members) for a default under the Partnership Agreement, provided that the replacement general partner (or managing member) is an entity reasonably satisfactory to City; or (ix) the transfer of the general partner’s (or managing member’s) interest to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, provided such replacement general partner (or managing member) is reasonably satisfactory to City.

7.4 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv) and (vii) of Section 7.3):

(i) The proposed transferee demonstrates to the City’s satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(ii) The Developer and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee’s qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer’s obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement. The assumption of such obligations shall be documented in an assignment and assumption agreement in form approved by City.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

(v) The final form of the Partnership Agreement, operating agreement, and other organizational documents of the proposed transferee, and any subsequent amendments that affect the City's economic interests under this Agreement or the City Documents shall be subject to the City's review and approval.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within thirty (30) days following City's receipt of written request by Developer, the proposed Transfer shall be deemed approved.

7.5 Effect of Transfer without City Consent.

7.5.1 In the absence of specific written agreement by the City, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

7.5.2 It shall be an Event of Developer Default hereunder entitling City to pursue remedies including without limitation, termination of this Agreement and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Developer assigns or Transfers this Agreement, the Improvements, or the Property, or any part thereof in violation of Article VII. This Section 7.5.2 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv) and (vii) of Section 7.3.

7.6 Recovery of City Costs. Within ten (10) days following City's delivery to Developer of an invoice detailing such costs, Developer shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer of this Agreement, Developer's interest in the Property or the Improvements, or part thereof, and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee.

ARTICLE VIII

SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Improvements or Developer's leasehold interest in the Property only for the purpose of securing loans for the purpose of financing the design and construction of the Improvements, and other expenditures reasonably necessary for the development of the Project pursuant to this Agreement. Developer shall not enter into any conveyance for such financing that is not contemplated in the applicable Financing Plan as it may be updated with City approval, without the prior written approval of the Authorized Representative or his or her designee. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition,

construction and land development. In no event shall City's fee interest in the Property be encumbered by any mortgage, deed of trust, or other security instrument.

8.2 Subordination. The City agrees that City will not withhold consent to reasonable requests for subordination of the Deed of Trust and Regulatory Agreement to deeds of trust provided for the benefit of lenders providing construction and/or permanent financing for the Project consistent with the approved Financing Plan as it may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights. Developer agrees to use best efforts to cause requested subordination agreements to include the rights set forth in Section 8.6 below.

8.3 Holder Not Obligated to Construct. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to complete construction of the Project or to guarantee such completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

8.4 Notice of Default and Lender Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the leasehold interest in the Property or the Improvements, provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach within the cure period provided to Developer. In the event that possession of the Improvements or the leasehold interest in the Property (or any portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Improvements or the leasehold interest in the Property, as applicable, within the applicable cure period, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify City of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer's obligations to City under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the Project and the Improvements and submit evidence reasonably satisfactory to City that it has the development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such holder properly completing the Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement.

8.5 Failure of Holder to Complete Improvements. In any case where, six (6) months after default by Developer in completion of construction of the Project, the holder of record of any mortgage or deed of trust has not exercised its option to construct the Project, or having first

exercised such option, has not proceeded diligently with such work, City shall be afforded those rights against such holder that it would otherwise have against Developer under this Agreement.

8.6 City Right to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by the Improvements or the leasehold interest in the Property, City may cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Developer. In such event, Developer shall be liable for, and City shall be entitled to reimbursement from Developer for all costs and expenses incurred by City associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the Deed of Trust.

8.7 Holder to be Notified. Developer agrees to use best efforts to ensure that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged and accepted in writing by the holder prior to its creating any security right or interest in the leasehold estate in Property or in the Improvements.

8.8 Modifications to Agreement. City shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter City's substantive rights and obligations under this Agreement.

8.9 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.1 Event of Developer Default. The following events shall constitute an event of default on the part of Developer hereunder ("**Event of Developer Default**"):

(a) Developer fails to commence or complete construction of the Project within the time period set forth in Section 5.1, or subject to force majeure, abandons or suspends construction of the Project prior to completion for a period of sixty (60) days or more;

(b) Developer fails to pay when due the principal and interest payable under the Predevelopment Note or the Construction/Permanent Note and such failure continues for thirty (30) days after City notifies Developer thereof in writing;

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

(d) Developer fails to maintain insurance as required pursuant to this Agreement, and Developer fails to cure such default within five (5) days;

(e) Developer fails to pay prior to delinquency taxes or assessments due on the Property or fails to pay when due any other charge that may result in a lien on the Property, and Developer fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(f) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(g) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (“**Bankruptcy Law**”), Developer or any general partner of an Approved Partnership that has acquired a leasehold interest in the Property or part thereof: (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any general partner of such Approved Partnership in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner of such Approved Partnership; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(i) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer, in each case if such decree, order, petition, or appointment is not removed or rescinded within sixty (60) days;

(j) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) 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 sixty (60) days after such event (unless a lesser time period is permitted for cure pursuant to paragraphs (h) or (i) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(l) An event of default arises under any City Document and remains uncured beyond any applicable cure period; or

(m) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Developer Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion.

9.2 City Default. An event of default on the part of City (“**Event of City Default**”) shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of sixty (60) days after written notice thereof from Developer to City, or in the case of a default which cannot with due diligence be cured within sixty (60) days, City fails to commence to cure the default within sixty (60) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

9.3 City’s Right to Terminate Agreement. If an Event of Developer Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City makes such election, City shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

9.4 City’s Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Developer Default and the expiration of any applicable cure period, City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Developer, except for notices or demands required by law or expressly required pursuant to the City Documents, exercise one or more of the following remedies:

(a) Accelerate and declare the balance of the Predevelopment Note and the Construction/Permanent Note and interest accrued thereon immediately due and payable;

(b) Seek specific performance to enforce the terms of the City Documents;

(c) Foreclose on the Improvements and the leasehold interest in the Property pursuant to the Deed of Trust;

(d) Terminate this Agreement pursuant to Section 9.3;

(e) Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the City Documents and City's rights thereunder.

9.5 Developer's Remedies Upon an Event of City Default. Upon the occurrence of an Event of City Default, in addition to pursuing any other remedy provided in this Agreement, Developer may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions.

9.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party.

9.7 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

9.8 Rights of Mortgagees. Any rights of the City under this Article IX shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments.

9.9 Construction Plans. If this Agreement is terminated by mutual agreement of the Parties or by City as a result of an Event of Developer Default, the Developer, at no cost to the City, shall deliver to the City copies of all construction plans and studies in the Developer's possession or in the possession of the Developer's consultants related to development of the Project on the Property, including without limitation, the Construction Plans, subject only to the rights of senior lenders identified in the Financing Plan as it may be updated with City approval. If the City utilizes the Construction Plans or studies, the City shall indemnify the Developer for any claims arising from such use.

9.10 Rights of Limited Partners. If the Project has been transferred to an Approved Partnership, whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to the limited partner(s) in accordance with Section 11.3. The limited partner(s) shall have the same right as Developer to cure or remedy any default hereunder within the cure period provided to Developer; provided however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general partner of Developer in order to cure such default, then the cure period shall be extended by an additional sixty (60) days after the removal and replacement of such general partner, provided that the limited partners have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement.

ARTICLE X

INDEMNITY AND INSURANCE

10.1 Indemnity. Developer shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against any and all Claims (including without limitation, Claims arising from any injury, death, illness, property damage, or loss of property) arising directly or indirectly, in whole or in part, as a result of or in connection with the development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof by Developer or Developer's contractors, subcontractors, agents, employees or any other party acting for or on behalf of Developer, or otherwise arising out of or in connection with Developer's performance or failure to perform under this Agreement, including without limitation, Claims arising or alleged to have arisen in connection with any violation of Applicable Laws in connection with the development, operation or management of the Project, or relating to approval of the Project or approval of this Agreement. Developer's indemnification obligations under this Section 10.1 shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Developer that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

10.2 Liability, Workers Compensation, and Property Insurance.

(a) Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a commercial general liability policy including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage with coverage limits in the greater of: (a) the amounts required by the construction and permanent lenders for the Project, or (b) One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) annual aggregate, together with Two Million Dollars (\$2,000,000) excess liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Developer (and if the Property has been transferred to an Approved Partnership, the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Developer (and if the Property has been transferred to an Approved Partnership, the general partners thereof), and any contractor with whom Developer (or an Approved Partnership) has contracted for the performance of work on the Property or otherwise

pursuant to this Agreement, carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident.

(d) Upon commencement of construction work and continuing until issuance of the final certificate of occupancy or equivalent for the Project, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(e) Commencing upon completion of construction of the Project, Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(f) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payee as its interests may appear.

(g) Prior to commencement of construction work, Developer shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal. Upon City's request, Developer shall furnish complete copies of all insurance policies required under this Agreement.

The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by the City Attorney, Developer shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(h) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse City for such expense upon receipt of billing from City.

(i) Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall

so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Developer shall furnish the required certificates and endorsements to City prior to the commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

(j) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, the City Attorney. At the option of and upon request by the City Attorney if the City Attorney determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Developer shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(k) Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to meet any change of circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Developer of any such adjustments, and Developer shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the close of escrow and the expiration or earlier termination of this Agreement.

11.2 Enforced Delay; Extension of Times of Performance. The time for performance of provisions of this Agreement by either Party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by unrelated third parties concerning or arising out of this Agreement or unseasonable weather conditions ("**Force Majeure**"). An extension of time for any of the above-specified causes will be deemed granted only if written notice by the Party claiming such extension is sent to the other Party within ten (10) calendar days from the commencement of the cause. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date pursuant to the schedule set forth in this Agreement, any unavoidable delay notwithstanding.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and City (acting in the discretion of the Authorized Representative unless he or she determines in his or her discretion to refer such matter to the City Council). City and Developer acknowledge that, notwithstanding any contrary provision of this Agreement, adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the Project shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement or any other City Document shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566
Attention: City Manager

Developer: Sunflower Irby LLC
c/o Satellite Affordable Housing Associates
1835 Alcatraz Avenue
Berkeley, CA 94703
Attention: Executive Director

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

11.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

11.7 Survival. All representations made by Developer hereunder, Developer's obligations pursuant to Sections 5.11, 5.14, 5.15, 6.1, 6.5, 6.7, 10.1 and 11.1, and all other provisions that expressly so state, shall survive the expiration or termination of this Agreement.

11.8 Headings; Interpretation; Statutory References. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it. All references in the City Documents to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Pleasanton shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.9 Action or Approval. Whenever action and/or approval by City is required under this Agreement, the City's Authorized Representative or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Authorized Representative determines in his or her discretion that such action or approval requires referral to City governing board for consideration.

11.10 Entire Agreement. This Agreement, including Exhibits A through G attached hereto and incorporated herein by this reference, together with the other City Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof. If the Exhibits to this Agreement are inconsistent with this Agreement, the more restrictive requirements shall control, as determined by the City's Authorized Representative. In the event of a conflict between this Agreement and the other City Documents, the more restrictive requirements shall control, as determined by the Authorized Representative.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

11.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement

shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.13 No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.14 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Developer and City is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Developer (except as expressly provided in this Agreement) or to any third party with respect to the Project or the City financing described herein. Developer and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Developer and its employees shall at no time hold themselves out as employees or agents of City. Except as City may specify in writing, Developer shall not have any authority to act as an agent of City or to bind City to any obligation.

11.15 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a “business day” means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of the State of California.

11.16 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

11.17 Inspection of Books and Records. Upon request, Developer shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of Developer necessary to determine Developer’s compliance with the terms of this Agreement.

11.18 Political Activity. None of the funds, materials, property or services contributed by City to Developer under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.19 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer in the event of any

default or breach by the City or for any amount which may become due to the Developer or its successor or on any obligation under the terms of this Agreement.

11.20 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Developer shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 *et seq.*, no person who is a director, officer, partner, trustee or employee or consultant of the Developer, or immediate family member of any of the preceding, shall make or participate in a decision, made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or the Developer. Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 *et seq.*, its implementing regulations manual and codes, and Government Code Section 1090.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

DEVELOPER:

Sunflower Irby LLC, a California limited liability company

By: Satellite AHA Development, Inc., a California nonprofit public benefit corporation

Its: Managing Member

By: _____

Print Name: _____

Title: _____

CITY:

City of Pleasanton, a municipal corporation

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

(Attach legal description of the Property.)

Exhibit B

FORM OF CONSTRUCTION/PERMANENT PROMISSORY NOTE

(Attach form of Note.)

Exhibit C

FORM OF DEED OF TRUST

(Attach form of Deed of Trust.)

Exhibit D

**FORM OF AFFORDABLE HOUSING REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS**

(Attach form of Regulatory Agreement.)

Exhibit E

FINANCING PLAN

(Attach Financing Plan when approved.)

Exhibit F

FORM OF CERTIFICATE OF COMPLETION

(Attach form of Certificate.)

Exhibit G

GROUND LEASE

(Attach form of Ground Lease.)

GROUND LEASE

by and between

City of Pleasanton, as Lessor

and

_____, **L.P., as Lessee**

Dated as of _____, 20__

(Sunflower Hill)

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE 1. DEFINITIONS	1
Section 1.1 Definitions.....	1
Section 1.2 Exhibits	7
ARTICLE 2. LEASE OF THE LAND.....	7
Section 2.1 Lease of Land.....	7
Section 2.2 Term.....	7
Section 2.3 Use	7
Section 2.4 Possession	8
Section 2.5 Memorandum of Lease	8
Section 2.6 AS-IS Conveyance	
ARTICLE 3. THE IMPROVEMENTS	
Section 3.1 Construction.....	9
Section 3.2 Liens.....	10
Section 3.4 Title to Improvements.....	11
Section 3.5 Benefits of Improvement During Term	11
ARTICLE 4. RENTS	12
Section 4.1 Ground Rent.....	12
Section 4.2 Payments	12
ARTICLE 5 TAXES AND OTHER IMPOSITIONS; UTILITIES	12
Section 5.1 Payment of Impositions	12
Section 5.2 Lessor’s Estate	13
Section 5.3 Contested Taxes and Other Impositions	13
Section 5.4 Valuation Assessment/Property Tax Exemption	13
Section 5.5 Failure to Pay Impositions	13
Section 5.6 Utilities.....	13
ARTICLE 6. INSURANCE	14
Section 6.1 Required Insurance Coverage	14
Section 6.2 Insurance Policies and Premiums	15
Section 6.3 Proceeds of Insurance	16
Section 6.4 Limitation of Liability.....	16
ARTICLE 7. MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS.....	17
Section 7.1 Maintenance of Leased Premises; Landscaping	17

Section 7.2	Landscaping Maintenance	18
Section 7.4	Indemnifications	18
ARTICLE 8.	MORTGAGE LOANS	19
Section 8.1	Intentionally omitted.....	19
Section 8.2	Liens and Encumbrances Against the Leasehold Estate.....	19
Section 8.3	Cost of Approved Loans to be Paid by Tenant	23
Section 8.4	Proceeds of Approved Loans	23
Section 8.5	Notice and Right to Cure Defaults Under Approved Loans	23
Section 8.6	Rights of Investor.....	23
Section 8.7	Right to Pay Taxes and Senior Mortgage	23
ARTICLE 9.	REPRESENTATIONS, WARRANTIES AND COVENANTS	23
Section 9.1	Representations, Warranties and Covenants of Lessor.....	24
Section 9.2	Representations, Warranties and Covenants of Lessee.....	25
Section 9.3	Hazardous Materials	25
Section 9.4	Relocation Obligations and Indemnity	25
Section 9.5	Hazardous Materials Indemnification.....	26
Section 9.6	Prevailing Wage Requirements.....	26
Section 9.7	Compliance with Laws	27
Section 9.8	Affordability and Use Restrictions	27
Section 9.9	Preference for City of Pleasanton Residents and Employees	27
Section 9.10	Reporting Requirements; Access to Information; Inspections	29
Section 9.12	Fair Housing	
Section 9.13	Management Entity	
ARTICLE 10	EMINENT DOMAIN.....	30
Section 10.1	Termination of Lease	30
Section 10.2	Continuation of Lease and Presumption of Restoration	30
Section 10.3	Temporary Taking	30
Section 10.4	Joinder.....	32
ARTICLE 11.	DAMAGE OR DESTRUCTION	32
Section 11.1	Damage or Destruction to Leased Premises	32
Section 11.2	Damage or Destruction Near End of Term	33
Section 11.3	Distribution of Insurance Proceeds.....	33
Section 11.4	Insurance Requirements.....	33

ARTICLE 12. EVENTS OF DEFAULT	33
Section 12.1 Events of Default	33
Section 12.2 Rights and Remedies.....	35
Section 12.3 Default by Lessor.....	36
Section 12.4 Notices	37
ARTICLE 13. QUIET ENJOYMENT AND POSSESSION; INSPECTIONS	37
Section 13.1 Quiet Enjoyment	37
Section 13.2 Lessor’s Right of Inspection	37
ARTICLE 14. VACATION OF LEASED PREMISES.....	37
Section 14.1 Vacation Upon Termination	37
ARTICLE 15. NON-MERGER	37
Section 15.1 Non-Merger.....	37
ARTICLE 16. TRANSFERS	38
Section 16.1 Permitted Transfer by Lessee.....	38
ARTICLE 17. MISCELLANEOUS PROVISIONS	39
Section 17.1 Consents.....	39
Section 17.2 Enforced Delay; Extension of Times of Performance	39
Section 17.3 Interpretation.....	39
Section 17.4 Entire Agreement: Modifications	39
Section 17.5 Governing Law	40
Section 17.6 Binding Effect.....	40
Section 17.7 Severability	40
Section 17.8 Further Assurances.....	40
Section 17.9 Authority to Execute Agreement	40
Section 17.10 Lease Administration and Approvals.....	40
Section 17.11 Captions	40
Section 17.12 Gender.....	41
Section 17.13 Exhibits	41
Section 17.14 References.....	41
Section 17.15 Cumulative.....	41
Section 17.16 Notices	41
Section 17.17 Counterparts.....	42
Section 17.18 Time of Essence.....	42

Section 17.19 Attorneys' Fees 42
Section 17.20 No Third Party Beneficiaries 42
Section 17.21 Parties Not Co-Venturers; Independent Contractor; No
Agency Relationship..... 42

- Exhibit A: Legal Description of the Leased Premises
- Exhibit B: Site Map of the Leased Premises
- Exhibit C: Memorandum of Lease
- Exhibit D: Financing Plan

GROUND LEASE
(Sunflower Hill)

This Ground Lease (the “**Lease**”) dated as of _____, 20__, is entered into by and between City of Pleasanton, a California municipal corporation (“**Lessor**”) and _____, L.P., a California limited partnership (“**Lessee**”).

RECITALS

A. Sunflower Irby LLC, a California limited liability company (“**Sunflower**”), entered into that certain Disposition, Development and Loan Agreement dated as of _____, 2018 with Lessor (as subsequently amended, the “**DDLA**”). Pursuant to the DDLA and to meet some of Lessor’s affordable housing goals under the City’s inclusionary housing ordinance as set forth in Chapter 17.44 of the City’s Municipal Code, Lessor has acquired that certain real property in the City of Pleasanton, County of Alameda, State of California, more particularly described in the legal description attached hereto as Exhibit A and depicted on the map attached as Exhibit B (the “**Land**”). Under the DDLA, the City agreed to ground lease the Land to Lessee for a term of seventy-five (75) years, and Lessee has agreed to develop and operate thereon a thirty-one (31) unit supportive housing development that will include twenty-nine (29) units that will available at affordable rents to low- and very low-income households that include at least one member that has a developmental disability.

B. Lessor desires to lease the Land to Lessee for a period of seventy-five (75) years pursuant to the terms of this Lease for development of the Project.

C. Capitalized terms which are referred to and utilized throughout this Lease are defined in Article 1 of this Lease.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants, representations, warranties and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. For the purposes of this Lease, the following defined terms shall have the meanings ascribed thereto in this Article 1:

(a) “**Additional Rent**” means all sums payable by Lessee to Lessor pursuant to this Lease other than Rent, including without limitation, sums payable to reimburse Lessor for the following, together with applicable interest and penalties thereon: (i) amounts paid by Lessor to discharge liens and claims pursuant to Section 3.2, (ii) Impositions paid by Lessor pursuant to Section 5.5, and (iii) amounts paid by Lessor to cure Lessee defaults under loans secured by the Leased Premises and the Improvements.

(b) **“Adjusted for Family Size Appropriate for the Unit”** shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to Project financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986 as amended (or successor provision).

(c) **“Affordable Rent”** means the following amounts, less a utility allowance and other fees and charges required to be paid by tenants of the Project on a non-optional basis: (i) for units that are restricted for rental to households with incomes of not more than twenty percent (20%) of AMI (**“20% Units”**), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of twenty percent (20%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, (ii) for units that are restricted for rental to households with incomes of not more than forty percent (40%) of AMI (**“40% Units”**), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of forty percent (40%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit; (iii) for units that are restricted for rental to households with incomes of not more than fifty percent (50%) of AMI (**“50% Units”**), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of fifty percent (50%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit; and (iv) for units that are restricted for rental to households with incomes of not more than sixty percent (60%) of AMI (**“60% Units”**), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of sixty percent (60%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

(d) **“AHP Loan”** means that certain construction/permanent loan provided by the Federal Home Loan Bank Affordable Housing Loan Program to be provided to Lessee in the principal amount of _____ Dollars (\$_____).

(e) **“Applicable Laws”** is defined in Section 9.7.

(f) **“Area Median Income”** or **“AMI”** means the median income for Alameda County, California, adjusted for Actual Household Size, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development (**“HCD”**) in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

(g) **“Approved Loans”** means all loans, including without limitation, the Senior Loans, the City Loan, the AHP Loan, and the County Loan obtained from time to time by Lessee for the construction and permanent financing of the Improvements in compliance with the Financing Plan attached hereto as Exhibit D, as such Financing Plan may be revised from time to time by written consent of the Parties, and the refinancing of any such loan provided that the new loan does not exceed the greater of (i) the outstanding principal balance of the original loan, and (ii) eighty percent (80%) the value of the Improvements as determined by an appraisal conducted at Lessee’s expense by an MAI appraiser selected by the lender and approved by Lessor.

(h) **“Casualty”** is defined in Article 11 hereof.

(i) **“City”** means the City of Pleasanton, California.

(j) **“City Loan”** means that certain construction/permanent loan to be provided by City to Lessee pursuant to the terms set forth in the DDLA, which City Loan consists of Two Hundred Fifty Thousand Dollars (\$250,000) that has been disbursed for Project predevelopment expenses, and an additional Two Million Dollars (\$2,00,000) that will be disbursed for Project construction costs, for a total loan amount equal to Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000).

(k) **“Claims”** means collectively: claims, demands, actions, causes of action, suits, judicial or administrative proceedings, damages, losses, liabilities, costs, expenses (including without limitation reasonable attorneys’ fees), damages, penalties, deficiencies, fines, orders, charges, judgments, remedial action requirements, and enforcement actions of any kind.

(l) **“Construction Plans”** means all construction documents upon which Lessee and Lessee’s contractors shall rely in developing the Land and constructing the Project (including landscaping, parking, common and public areas) and shall include, without limitation, final architectural drawings, the site development plan, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications.

(m) **“County”** means the County of Alameda, California.

(n) **“County Loan”** means that certain permanent loan of Measure A1 funds to be provided by County to Lessee in the principal amount of \$_____.

(o) **“Commencement Date”** means the date upon which the Memorandum is recorded in the Official Records.

(p) **“DDLA”** is defined in Recital A.

(q) **“Eligible Household”** means a household for which gross household income upon initial occupancy does not exceed the maximum income level as specified in Section 9.8 and which includes one or more members that have a developmental disability as defined in subdivision 4512(a) of the California Welfare and Institutions Code..

(r) **“Environmental Laws”** means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of Hazardous Materials, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (iv) the use, release or disposal of Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, together with any regulations promulgated thereunder.

(s) “**Event of Default**” is defined in Article 12 of this Lease.

(t) “**Financing Plan**: means the plan attached hereto as Exhibit D which among other things describes the sources and uses for construction and permanent financing for the Project.

(u) “**Governmental Authorities**” means all applicable federal, State or local governmental or quasi-governmental entities, subdivisions, agencies, authorities or instrumentalities having jurisdiction over the Leased Premises, the Improvements, Lessor or Lessee.

(v) “**Hazardous Materials**” means any chemical, material or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Leased Premises, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. (“CERCLA”); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 5101, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq. (“RCRA”). The term Hazardous Materials shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and in any and all amendments thereto; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), asbestos and asbestos-containing materials, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by product material as defined at 42 U.S.C. 2011, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; radon gas; or any other chemical, material or substance (i) which poses a hazard to the Leased Premises, to adjacent properties, or to persons on or about the Leased Premises, (ii) which causes the Leased Premises to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Leased Premises requires investigation, reporting or remediation under any such laws or regulations.

(w) “**HUD**” means the U.S. Department of Housing and Urban Development.

(x) “**Impositions**” means all taxes, assessments, water and sewer charges, charges for public utilities, excises, levies, license and permit fees and other charges that shall or may be assessed, levied or imposed during the Term by any Governmental Authorities upon the Leased Premises or any part thereof, including the buildings or improvements now or hereafter located thereon, including without limitation, possessory interest taxes. “Impositions” shall not

include any income tax, capital levy, estate, succession, inheritance, or similar taxes of Lessor. Except for a tax, assessment, or charge resulting from Lessee's use of the Leased Premises pursuant to this Lease, "Impositions" shall not include any franchise tax imposed upon any owner of the fee of the Leased Premises, or any income, profits or revenue tax, assessment or charge imposed upon the rent or other benefit received by Lessor under this Lease by any Governmental Authorities.

(y) **"Improvements" or "Project"** means the affordable rental housing development comprised of thirty-one (31) multi-family residential dwelling units to be developed on the Land, all of which, other than two (2) manager's units, will be restricted for occupancy by Eligible Households at Affordable Rents, and related improvements, including without limitation, the following: community space, parking, tenant related space and related ancillary facilities, together with any and all replacements or substitutions therefor or modifications thereto, in accordance with all City approvals and use conditions applicable to the Leased Premises. The Improvements will be constructed in accordance with a site plan and construction plans approved by the City.

(z) **"Indemnitees"** means Lessor and its elected and appointed officials, officers, employees, agents, contractors, representatives and volunteers.

(aa) **"Insurance Requirements"** means the requirements, whether now or hereafter in force, of any insurer or insurance carrier, any board of fire underwriters or any other company, bureau, organization or entity performing the same or similar functions, applicable to the Leased Premises and/or the Improvements, or any portion thereof, to the extent so applicable.

(bb) **"Investor"** means the low income housing tax credit investor that will provide equity to the Project and all permitted successors and assigns. _____ is the initial Investor.

(cc) **"Land"** is defined in Recital A above.

(dd) **"Lease Year"** means a calendar year during the term of this Lease.

(ee) **"Leased Premises"** means the Land, together with all and singular rights, easements, licenses, privileges and appurtenances thereunto attaching or in any way belonging thereto.

(ff) **"Leasehold Mortgage"** means any mortgage, deed of trust, security agreement or collateral assignment pursuant to an Approved Loan encumbering Lessee's Estate as a leasehold mortgage lien.

(gg) **"Legal Requirements"** means all laws, statutes, codes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities and the appropriate agencies, officers, departments, boards and commissions thereof, whether now or hereafter in force applicable to Lessor, Lessee, the Leased Premises, the Improvements, or any portion thereof, to the extent so applicable.

(hh) “**Lender**” means the holder, mortgagee, grantee or secured party under any Leasehold Mortgage.

(ii) “**Lessee’s Estate or Leasehold Estate**” means during the Term of this Lease, Lessee’s leasehold interest in the Land and Lessee’s fee ownership interest in the Improvements.

(jj) “**Lessor’s Estate**” means Lessor’s fee estate in the Land and reversionary interest in the Improvements pursuant to this Lease.

(kk) “**Loan Documents**” means all documents executed by Lessee evidencing or securing a Leasehold Mortgage.

(ll) “**Management Agent**” means the Person designated from time to time as “Management Agent” of all or any portion of the Improvements under any management agreement entered into from time to time with Lessee. The initial Management Agent will be _____.

(mm) “**Memorandum**” means the Memorandum of Ground Lease to be executed by the Parties substantially in the form attached hereto as Exhibit C and recorded in the Official Records as of the Commencement Date.

(nn) “**Net Condemnation Award**” means the net amounts owed or paid to the Parties or to which either of the Parties may be or become entitled by reason of any Taking or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses incurred by the Parties in collecting such award or payment

(oo) “**Official Records**” means the Official Records of Alameda County.

(pp) “**Partnership**” means the limited partnership that is the Lessee.

(qq) “**Party**” means Lessor or Lessee, as applicable. Lessor and Lessee shall be referred to collectively as the “Parties.”

(rr) “**Permitted Encumbrances**” means permitted title encumbrances as defined in Section 9.1(a).

(ss) “**Person**” means an individual, partnership, corporation, public benefit corporation, trust, unincorporated association, or other entity or association.

(tt) “**Project**” means the Improvements as defined above.

(uu) “**Regulatory Agreement**” means that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants to be executed by Lessor and Lessee and recorded concurrently with execution of this Lease.

(vv) “**Rent**” is defined in Section 4.1 hereof.

(ww) “**Senior Loans**” means that certain construction loan in the original principal amount of approximately \$_____ to be provided by _____ and that certain permanent loan in the approximate amount of \$_____ to be provided by _____.

(xx) “**Taking**” means a taking during the Term hereof of all or any part of the Leased Premises and/or the Improvements, or any interest therein or right accruing thereto, as a result of the exercise of the right of condemnation or eminent domain materially affecting the Leased Premises or any part thereof. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking.

(yy) “**Tax Credit Restrictive Covenant**” means the agreement to be executed by Lessee and TCAC and recorded in the Official Records against Lessee’s Estate, and setting forth certain terms and conditions under which the residential units in the Project will be operated.

(zz) “**TCAC**” means the California Tax Credit Allocation Committee

(aaa) “**TCAC Rider**” means the TCAC Lease Rider Agreement, the form of which has been approved by Lessor, and that will be recorded against the Leased Premises following recordation of the Memorandum.

(bbb) “**Tenant(s)**” means any tenant, sublessee or licensee of Lessee under any Tenant Lease(s).

(ccc) “**Tenant Lease(s)**” means any lease or license agreement entered into by Lessee with residents of the residential units to be developed on the Land.

(ddd) “**Term**” is defined in Section 2.2 hereof.

(eee) “**Transfer**” means any sale, assignment, transfer, conveyance, lease, sublease, encumbrance, mortgage, or hypothecation, in any manner or form or any agreement to do any of the foregoing.

Section 1.2 Exhibits. The Exhibits referred to in this Lease and attached hereto are:

- Exhibit A: Legal Description of the Land
- Exhibit B: Site Map of the Land
- Exhibit C: Memorandum of Lease
- Exhibit D: Financing Plan

ARTICLE 2.
LEASE OF THE LAND

Section 2.1 Lease of Land. Subject to the terms hereof and in consideration of the covenants of payment and performance stipulated herein, Lessor leases the Land to Lessee, and in consideration thereof, Lessee takes, hires and leases the Land from the Lessor, pursuant to the terms of this Lease.

Section 2.2 Term. Unless sooner terminated pursuant to the provisions hereof, this Lease shall continue in full force and effect for a term (“**Term**”), commencing on the Commencement Date and expiring on midnight the day immediately preceding the seventy-fifth (75th) anniversary thereof.

Section 2.3 Use. Subject to the provisions hereof, Lessee shall use the Leased Premises for the construction and operation of the Project, which includes the construction, development and operation of the Improvements on the Land in accordance with the restrictions and requirements set forth in Article 3 hereof. Further, Lessee agrees:

- (a) not to use the Leased Premises for any disorderly or unlawful purpose;
- (b) to use reasonable efforts to prevent any Tenant from committing or maintaining any nuisance or unlawful conduct on or about the Leased Premises;
- (c) to use reasonable efforts to prevent any action by any Tenant that would cause Lessee to violate any of the covenants and conditions of this Lease with respect to the Improvements;
- (d) to take reasonable action, if necessary, to abate any action by any Tenant that violates, or that would cause Lessee to violate this Lease; and
- (e) subject to the laws of the State of California and the rights of Tenants, to permit Lessor and its agents to inspect the Leased Premises or any part thereof at any reasonable time during the Term.

Section 2.4 Possession. Lessor agrees to and shall provide possession of the Leased Premises to Lessee upon close of construction financing, free and clear of all rights to possession or use by any tenants or other individuals or entities other than Lessee (except as disclosed to Lessee or apparent from Lessee’s inspection), and free and clear of any encumbrances except as expressly approved by Lessee in writing. Lessee hereby approves the TCAC Rider, the Regulatory Agreement, and the encumbrances associated with the Senior Loans, the City Loan, the AHP Loan, and the County Loan.

Section 2.5 Memorandum of Lease. The Parties shall execute and acknowledge a memorandum of ground lease, substantially in the form attached hereto as Exhibit C, which shall be recorded at Lessee’s expense

Section 2.6 AS-IS Conveyance. Lessee specifically acknowledges that Lessor is leasing the Leased Premises to Lessee on an “AS IS”, “WHERE IS” and “WITH ALL FAULTS”

basis and that except as may be expressly stated in this Lease or the DDLA, Lessee is not relying on any representations or warranties of any kind whatsoever, express or implied, from Lessor as to any matters concerning the Leased Premises, including without limitation: (i) the quality, nature, adequacy and physical condition of the Leased Premises, including, but not limited to, appurtenances, access, landscaping, parking facilities, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Leased Premises, (iv) the development potential of the Leased Premises, and the Leased Premises' use, merchantability, or fitness, suitability, value or adequacy of the Leased Premises for any particular purpose, (v) the zoning or other legal status of the Leased Premises or any other public or private restrictions on use of the Leased Premises, (vi) the compliance of the Leased Premises or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or removal of Hazardous Material, substances or wastes on, under or about the Leased Premises or the adjoining or neighboring property; (viii) the quality of any labor and materials used in any improvements on the Leased Premises, or (ix) the condition of title to the Leased Premises.

Section 2.7 Lessee to Rely on Own Experts. Lessee understands that notwithstanding the delivery by Lessor to Lessee of any materials, including, without limitation, third party reports, Lessee will rely entirely on Lessee's own experts and consultants and its own independent investigation in proceeding with the leasing of the Leased Premises.

ARTICLE 3. THE IMPROVEMENTS

Section 3.1 Construction. Lessee shall cause the Improvements to be constructed in substantial compliance with the Construction Plans approved by City and the terms and conditions of the land use permits and approvals and building permits, including any variances granted for the Improvements to be approved by Lessor, within _____ (____) months from the award of a preliminary reservation of low income housing tax credits for the Improvements from TCAC. Any and all Improvements constructed by or on behalf of Lessee shall be constructed in a good and workmanlike manner, in compliance with all applicable Legal Requirements. Except as may be specified in the documents evidencing the City Loan and any City financing for the Project that may be approved by the City in its sole discretion, Lessee shall bear the entire and sole cost of planning, designing, engineering, financing, constructing, supervising, and inspecting the Improvements, including all fees and mitigation measures. City acknowledges that as of the Commencement Date, the City has approved the Construction Plans.

Section 3.2 Liens. Lessee shall not have any right, authority or power to bind Lessor, Lessor's Estate, or any interest of Lessor in the Land or the Leased Premises, for any claim for labor or material, or for any other charge or expense, lien or security interest incurred in connection with Lessee's use of the Land, or the development, construction or operation of the Improvements, or any change, alteration or addition thereto. Lessee shall have the right to encumber Lessee's Estate with security instruments required in connection with the Approved Loans, which Approved Loans shall not require the Lessor's consent, and with utility easements and other customary easements necessary and incidental to the development, construction and

operation of the Improvements, provided that such easements are subject to the approval of Lessor, which shall not be unreasonably withheld, conditioned or delayed.

The Lessee shall not create or permit or suffer to be created or to remain upon the Lessor's Estate or any interest of Lessor in the Land or the Leased Premises, or upon the Leased Premises, or any part thereof, and will discharge, any lien, including, but not limited to, the liens of mechanics, laborers, materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Leased Premises or the Project, or any part thereof. If any claim of lien is filed against the Lessor's Estate or any interest of Lessor in the Land or the Leased Premises, or a stop notice is served on any other lender or other third party in connection with the Leased Premises or the Improvements, or upon the Leased Premises, or any part thereof, then the Lessee shall, within twenty (20) 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 Lessor a surety bond in sufficient form and amount, or provide the Lessor with other assurance satisfactory to the Lessor that the claim of lien or stop notice will be paid or discharged. If the Lessee fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Lease, then in addition to any other right or remedy, the Lessor may (but shall be under no obligation to) following not less than 10 business days' written notice to Lessee, discharge such lien, encumbrance, charge, or claim at the Lessee's expense. Any expense incurred by Lessor pursuant to this Section shall be immediately due and payable by Lessee to Lessor as Additional Rent under this Lease. The Lessee shall have the right to contest in good faith and by appropriate legal proceedings the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien; provided that the Lessee shall utilize all reasonable means (including the posting of adequate security for payment) to protect the Leasehold Estate, the Lessor's Estate and any other interest of Lessor in the Land or the Leased Premises against foreclosure. In addition to any other indemnities provided in this Lease, Lessee shall indemnify, protect, defend (with counsel of Lessor's choosing), and hold harmless the Indemnitees from any and all alleged or actual Claims arising by reason of a mechanic's lien or work, labor, services, or materials supplied or claimed to have been supplied to Lessee or anyone holding the Leased Premises or the Improvements, or any part thereof, through or under Lessee.

Nothing in this Lease shall be construed as constituting the consent of the Lessor, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Leased Premises or the Project, or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving the Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the Lessor's Estate or any other interest of Lessor in the Land or the Leased Premises. The Lessor shall have the right at all reasonable times to post and keep posted on the Leased Premises any notices which the Lessor may deem necessary for the protection of the Lessor and of Lessor's Estate or any other interest of Lessor in the Land or the Leased Premises from mechanics' liens or other claims. In addition, but subject to the paragraph above, the Lessee shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to the Lessee, or any of its respective contractors or subcontractors in connection with the Leased Premises and the Project. The provisions of this Section shall survive the expiration or termination of this Lease.

Section 3.3 Permits, Licenses and Easements. Lessor agrees to use Lessor's best reasonable efforts to assist Lessee in obtaining any and all permits, licenses, easements and other authorizations required by any Governmental Authority with respect to any construction or other work to be performed on the Leased Premises and to grant, or to assist Lessee in obtaining, as applicable, all permits, licenses, easements and other governmental authorizations that are necessary or helpful for electric, telephone, gas, cable television, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements. Payment of all fees, costs and expenses associated with any of the foregoing shall be the responsibility of Lessee, and Lessor shall have no responsibility to pay any such fees, costs or expenses.

Section 3.4 Title to Improvements.

(a) During the Term. Lessor hereby grants to Lessee, without warranty express or implied, any right, title, or interest that Lessor may have in the Improvements now or hereafter located on the Leased Premises. Notwithstanding any provision in this Lease to the contrary, the Improvements and all alterations, additions, equipment, and fixtures built, made or installed by Lessee in, on, under or to the Leased Premises or Improvements shall be the sole property of Lessee until the expiration of the Term or other termination of this Lease; provided, however, that Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Lease or as approved in writing by Lessor. It is the intent of the parties hereto that this Lease shall create a constructive notice of severance of the Improvements from the Leased Premises without the necessity of a deed from Lessor after the Improvements have been constructed. Notwithstanding the foregoing, Lessee shall be permitted to demolish the improvements located on the Leased Premises as of the Commencement Date, provided that all work related to such demolition is performed in compliance with all Legal Requirements, including without limitation, all Environmental Laws.

(b) After the Term. Upon the expiration of the Term or other termination of the Lease, the Improvements and all alterations, additions, equipment and fixtures shall be deemed to be and shall automatically become the property of Lessor, without cost or charge to Lessor. Lessor agrees that Lessee, at any time prior to the expiration or other termination of this Lease, may remove from the Leased Premises any and all equipment which Lessee has furnished for maintenance purposes or for the use of the Management Agent, provided that Lessee shall repair any physical damage to the Leased Premises caused by the removal of such equipment and property. Lessee agrees to execute, at the request of Lessor at the end of the Term, a confirmatory quitclaim deed of the Improvements to Lessor to be recorded at Lessor's option and expense and any other documents that may be reasonably required by Lessor or Lessor's title company to provide Lessor title to the Leased Premises and the Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by Lessor. Without limiting the foregoing, upon the expiration or sooner termination of this Lease, Lessee shall deliver the Leased Premises and the Improvements to Lessor free of all monetary liens and encumbrances unless otherwise consented to in writing by Lessor. Any equipment or other personal property not removed from the Leased Premises by the expiration of the Term shall become the property of Lessor, and Lessor shall have the right to dispose of such equipment and property in the manner of Lessor's choosing.

Section 3.5 Benefits of Improvement During Term. Lessor acknowledges and agrees that any and all depreciation, amortization and tax credits for federal or state tax purposes relating to the Improvements located on the Leased Premises and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted or credited exclusively by Lessee during the Term.

ARTICLE 4.
RENTS

Section 4.1 Ground Rent. For each Lease Year during the Term, Lessee shall pay to Lessor on the Commencement Date of this Lease and on each succeeding anniversary thereof rent in advance for the next succeeding Lease Year (“**Rent**”) in the nominal amount of \$1.00 per Lease Year or partial Lease Year.

Section 4.2 Payments. All Rent, Additional Rent, and other sums, if any, due Lessor hereunder shall be paid by Lessee to Lessor at the address of Lessor set forth hereinafter for notices, or to such other person and/or at such other address as Lessor may direct by written notice to Lessee, without notice or demand, and without abatement, deduction or set off.

ARTICLE 5.
TAXES AND OTHER IMPOSITIONS; UTILITIES

Section 5.1 Payment of Impositions. As and when the same shall become due, Lessee will pay all of the Impositions, except that if any Imposition that Lessee is obligated to pay in whole or in part is permitted by law to be paid in installments, Lessee may pay or cause to be paid such Imposition (or its proportionate part thereof) in installments as and when such installments become due. Upon the written request of Lessor, Lessee shall provide to Lessor evidence satisfactory to Lessor of payment of all Impositions. During the first and last years of the Term, all Impositions shall become payable during each calendar, fiscal, tax or Lease Year, as applicable, shall be ratably adjusted on a per diem basis between Lessor and Lessee in accordance with the respective portions of such calendar, fiscal, tax, assessment or Lease Year during the Term. If any special assessments are payable in installments, Lessee shall pay only those installments that are due and payable during the Term.

Section 5.2 Lessor’s Estate. Notwithstanding anything contained in this Lease to the contrary, any and all Impositions for taxes and assessments charged against the value of Lessor’s Estate shall be the responsibility and obligation of Lessor. Notwithstanding any contrary provision of this Lease, Lessee shall be responsible for payment of any possessory interest taxes payable in connection with this Lease and the Leasehold Estate.

Section 5.3 Contested Taxes and Other Impositions.

(a) Lessee, in its own name or in the name of Lessor if prior written consent of Lessor is obtained by Lessee, may contest the validity or amount of any Imposition relating to all or any portion of the Leased Premises, in which event the payment thereof, if authorized by applicable law, may be deferred during the pendency of such contest, if diligently prosecuted. If

applicable law is silent on or expressly disallows deferring payment pending the contest of validity, Lessee shall timely pay any Imposition that is subject to dispute under protest, reserving any and all rights for repayment from the applicable taxing entity if resolution of such contest results in a decision or judgment in Lessee's favor.

(b) As may be necessary or desirable, Lessor or Lessee, as applicable, upon the request of the other Party, shall use its best reasonable efforts to assist in any such proceeding to contest the validity or amount of any Imposition.

Section 5.4 Valuation Assessment/Property Tax Exemption. If applicable, Lessee may attempt to obtain a lowering of the assessed valuation of the Leased Premises for any year or obtain a property tax exemption for the purpose of reducing taxes thereon. In such event, upon Lessee's request, Lessor shall use its reasonable efforts to assist Lessee in such endeavor; provided, however, that Lessor shall incur no liability or otherwise be construed as being in default under this Lease for any assistance (or limitation of assistance) provided to Lessee pursuant to this Section.

Section 5.5 Failure to Pay Impositions. If Lessee shall fail to pay any Impositions before the same become delinquent, except if Lessee is in good faith contesting such Impositions pursuant to Section 5.3 hereof, Lessor, at its election, may pay such Impositions (but shall not be obligated to pay same), together with any interest and penalties due thereon, and the amount so paid by Lessor shall be repayable to Lessor by Lessee, with an additional interest payment payable to Lessor in an amount of 10% of the total payment (including interest and payments) paid by Lessor for the Imposition, or the maximum amount of interest allowable pursuant to law, whichever is less, within thirty (30) days as Additional Rent hereunder.

Section 5.6 Utilities. Lessee shall pay all charges for all utilities used, rendered or supplied upon or in connection with the Improvements and the operation or construction thereof including, but not limited to, all charges for gas, electricity, light, heat or power, all telephone and other communications services, all water rents and sewer service charges, and all sanitation fees or charges (all of the foregoing, collectively "Utility Charges") levied or charged against the Leased Premises during the Term; provided, however, that Lessee shall have no responsibility hereunder for the payment of Utility Charges for utilities supplied by the respective providers directly to Tenants for such Tenants' use in connection with the occupancy of their respective residential units unless otherwise provide in the applicable Tenant Lease. Notwithstanding any contrary provision of this Lease, Lessor shall have no responsibility for payment of any Utility Charges.

ARTICLE 6. INSURANCE

Section 6.1 Required Insurance Coverage. Standard "All Risk" Casualty and Fire and Extended Coverage Endorsement. Lessee shall during the Lease Term keep the Leased Premises insured against loss or damage by a standard all risk policy, excluding earthquake risks, in amounts such that the proceeds of such insurance shall not be less

than the full replacement value of the Leased Premises unless otherwise consented to in writing by Lessor and the other Lenders.

(a) Liability and Property Damage Insurance. During the Lease Term, Lessee shall keep in full force and effect a policy or policies of comprehensive general liability and property damage insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the Leased Premises. The limits of such insurance shall be not less than Two Million Dollars (\$2,000,000) combined single limit each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage, or such other policy limits as Lessor may require in its reasonable discretion, including coverage for bodily injury, property damage, hired and non-owned automobile liability, products, completed operations and contractual liability coverage.

(b) Workers' Compensation Insurance. Lessee shall require all contractors performing work on the Leased Premises to carry workers' compensation insurance covering all persons employed in connection with the Leased Premises or the Improvements and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Lessor and/or Lessee. Lessee shall furnish or cause to be furnished to Lessor evidence satisfactory to Lessor that Lessee (if Lessee has any employees), and any contractor that has contracted for the performance of work on the Leased Premises, or otherwise pursuant to this Lease carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident.

(c) Builders' Risk Insurance. Upon commencement of construction and continuing until issuance of a certificate of occupancy, or equivalent for the Improvements, Lessee and all contractors working on behalf of Lessee shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming Lessor as loss payee as its interests may appear. During the course of any alteration, construction or reconstruction, the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000), Lessee shall require any contractor to provide builders' risk insurance for the full insurable cost of the work and liability insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury or property damage insuring the interests of Lessor, Lessee and any contractors and subcontractors.

Section 6.2 Insurance Policies and Premiums.

(a) All liability policies required by this Lease or any of the Lenders shall be written on an occurrence basis, and shall name the Indemnitees as additional insureds. Duplicate copies of such policies or certificates of such insurance shall be promptly furnished to Lessor.

(b) All policies of insurance shall include an endorsement that provides that notice of any change or cancellation of said policy must be made in writing and sent to Lessee and Lessor at their respective principal offices at least thirty (30) days before the effective date of change or cancellation.

(c) The rights of Lessor to receipt of any insurance proceeds will be subject and subordinate to the rights of any Lender pursuant to and in accordance with applicable Loan Documents.

(d) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII.

(e) If any insurance policy or coverage required hereunder is canceled or reduced, Lessee shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Lessor a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Lessor may, with notice and at its option, procure such insurance coverage at Lessee's expense, and Lessee shall promptly reimburse Lessor for such expense upon receipt of billing from Lessor.

(f) Coverage provided by Lessee shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Lessor, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Lessor. Lessee shall furnish the required certificates and endorsements to Lessor prior to the commencement of rehabilitation or construction work on the Project, and shall provide Lessor with certified copies of the required insurance policies upon request of Lessor.

(g) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and if such deductibles or retentions differ from those specified in the insurance policies approved by City as of the Commencement Date, they shall be subject to approval by, City's Risk Manager. At the option of and upon request by City's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Lessee shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(h) Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Commencement Date nor more than once in every three (3) year period) to address changes in circumstances, including, but not limited to, changes in the purchasing power of the dollar and the litigation climate in California, provided that such adjustments are consistent with generally prevailing requirements for residential multi-family developments similar to the Project and located in the San Francisco/Alameda County area. Within thirty (30) days following Lessor's delivery of written notice of any such adjustments, Lessee shall provide Lessor with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

(i) Additional Insured. For all liability insurance required by this Agreement, Lessee (and Lessee's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding

any lesser minimum limits specified in this Agreement. This Agreement requires Lessee (and Lessee's contractors) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Lessee (or Lessee's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Lessee (or Lessee's contractors as applicable) obtain insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of such minimum amounts.

Section 6.3 Proceeds of Insurance.

(a) For so long as any Leasehold Mortgage on the Leased Premises is outstanding: All fire and standard risk or extended coverage (casualty) insurance proceeds shall be applied to the payment of the costs of repairing or rebuilding that part of the Leased Premises damaged or destroyed if (i) Lessee agrees in writing within ninety (90) days after payment of the proceeds of insurance that such repair or rebuilding is economically feasible, and (ii) each Lender permits such repair or rebuilding, provided that the extent of the Lessee's obligation to restore the Leased Premises shall be limited to the amount of the insurance proceeds.

(b) If the Improvements are not repaired or rebuilt, all such proceeds shall be applied in a manner consistent with the terms of the Leasehold Mortgages.

(c) In the event that no Leasehold Mortgage is outstanding, all insurance proceeds received under the policies set forth in this Article 6 shall be paid to Lessee, provided that Lessee agrees that it shall apply such proceeds for reconstruction or repair of the Improvements unless such repair or reconstruction is not economically feasible.

(d) To the extent any of the above provisions are inconsistent with the provisions of any of the Loan Documents, the Loan Documents shall be controlling.

Section 6.4 Limitation of Liability.

(a) In addition to any other indemnities provided in this Lease, Lessee shall indemnify, protect, defend (with counsel reasonably acceptable to Lessor), and hold harmless the Indemnitees from and against all Claims arising out of, attributable to or otherwise occasioned, in whole or in part, by any act or omission of Lessee, its agents, contractors, servants, employees, or invitees, arising from or relating to breach of Lessee's representations and warranties or the operation of the Leased Premises, except to the extent any such Claim arises from the gross negligence or willful misconduct of Lessor or the Indemnitees.

(b) In addition to any other indemnities provided in this Lease, Lessor shall indemnify, protect, defend (with counsel reasonably acceptable to Lessee), and hold harmless Lessee, its officers, employees, agents, contractors, servants, directors, members or partners from and against all Claims arising out of, attributable to or otherwise occasioned, in whole or in part, by any act or omission of Lessor, its agents, contractors, servants, employees, or invitees, arising from breach of Lessor's representation and warranties or Lessor's obligations under this Lease,

except to the extent any such Claim arises from the gross negligence or willful misconduct of Lessee or its officers, employees, agents, contractors, servants, directors, members or partners.

(c) The provisions of this Section 6.4 shall survive the expiration or termination of this Lease.

ARTICLE 7.
MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS

Section 7.1 Maintenance of Leased Premises; Landscaping. Until possession is transferred to Lessee, it is Lessor's obligation, at Lessor's sole cost and expense, to keep and maintain the Leased Premises. During the Term, at Lessee's sole cost and expense, Lessee shall keep and maintain the Leased Premises, all Improvements hereafter developed, and all appurtenances thereunto belonging, in good and safe order, condition and repair. All such maintenance and repair shall conform to and comply with all Legal Requirements affecting the Leased Premises.

Section 7.2 Landscaping Maintenance.

(a) The provisions of this Section 7.2 are intended to satisfy, with respect to the Leased Premises, Condition No. ____ of the Conditions of Approval approved by the City of Pleasanton in connection with its approval of Planned Unit Development for File No. _____.

(b) Lessee, at no expense to the Lessor, shall maintain in healthful, attractive and reasonably weed-free manner all the landscaped areas related to the Project as shown in the landscaping plan approved by the City. "Landscaped areas" as used in this Lease shall mean plantings and irrigation systems which have been installed, or are proposed to be installed, pursuant to the City-approved landscaped plan for the Project including those in City right-of-ways. All plantings shall be maintained using generally accepted methods of cultivation to ensure reasonably normal, healthy plant growth. Maintenance shall include replacement of plantings, when necessary, and all ordinary and usual care, including, but not limited to, irrigation, fertilization, pest and disease control, weeding, rotation of plantings and the removal of trimmings, rubbish, debris, and other solid waste. Lessee shall, at no expense to the Lessor, install, maintain, repair, and replace, where necessary, such irrigation systems as are required to provide adequate irrigation in compliance with water conservation practices.

(c) If, in the reasonable judgment of the City Engineer, Lessee has failed to maintain properly any landscaping as required by this Lease, the Lessor may perform such maintenance, at its option, after thirty (30) days' prior written notice to Lessee of such failure to maintain. In such event, the Lessor's performance of such maintenance shall be at the Lessee's sole expense and Lessee, upon demand by the Lessor, shall pay to the Lessor all reasonable expenses incurred by the Lessor in the performance of such maintenance.

(d) If any maintenance, repair, or replacement of landscaping needs immediate correction as a result of a public safety or health hazard, as reasonably determined by the City Engineer, and such maintenance is not performed, or cannot be performed, by Lessee within twenty-four (24) hours of receipt of such notice thereof, the Lessor may perform or cause

to be performed such maintenance at Lessee's expense, and Lessee, upon demand by the Lessor, shall pay to the Lessor all reasonable expenses incurred by the Lessor in the performance of such maintenance.

Section 7.3 Alterations to Leased Premises. Lessee may make any additions, alterations or changes (sometimes collectively referred to herein as "Alterations") in or to the Improvements subject, however, to the following conditions:

- (a) No Alterations shall be made that would tend to impair the structural soundness of the Improvements;
- (b) No Alterations shall be undertaken that are prohibited by, or would cause the Leased Premises, the Improvements, Lessee, or Lessor to be in breach or violation of any Legal Requirements;
- (c) No Alterations shall be undertaken until Lessee shall have procured, to the extent the same may be required from time to time, all permits and authorizations of all applicable Governmental Authorities, all require consents of any Lender, and the consent of Lessor. Lessor shall join in the application for such permits or authorizations whenever such action is necessary or helpful and is requested by Lessee, and shall use Lessor's reasonable efforts to obtain such permits or authorization; and
- (d) Any Alterations shall be performed in good and workmanlike manner and in compliance with all applicable Legal Requirements and all applicable Insurance Requirements.
- (e) Any and all Alterations are consistent with the use of the Leased Premises as authorized under this Lease.
- (f) Any Alteration that will exceed the sum of Two Hundred Fifty Thousand Dollars (\$250,000) in cost (increasing annually by the amount of the Consumer Price Index-Urban (CPI-U) for the San Francisco-Oakland-San Jose, California metropolitan area) shall require Lessor's advance written consent which shall not be unreasonably withheld.

Section 7.4 Indemnifications. Notwithstanding any other provision of this Lease to the contrary, and in addition to any other indemnities provided in this Lease, to the fullest extent permitted by law, Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Lessor) the Indemnitees from and against any and all Claims, arising from or relating to Lessee's obligations under this Lease or the construction or operation of the Improvements or any Alterations except to the extent any such Claim arises from the gross negligence or willful misconduct of the Indemnitees. In addition, if any contractor or subcontractor which performed any construction work for Lessee or Lessee's affiliates on the Improvements or Alterations shall assert any claim against Lessor on account of any damage alleged to have been caused by reason of acts of negligence of Lessee or Lessee's affiliates, members, partners, officers, directors, affiliates, agents, employees or construction contractors, Lessee shall defend at its own expense any suit based upon such claim; and if any judgment or claim against Lessor shall be allowed, Lessee shall pay or cause to be paid or satisfied such

judgment of claim and pay all costs and expenses in connection therewith. The provisions of this Section shall survive the expiration or termination of this Lease.

ARTICLE 8.
MORTGAGE LOANS

Section 8.1 Intentionally omitted.

Section 8.2 Liens and Encumbrances Against the Leasehold Estate. The Lessee shall have the right to encumber the Leasehold Estate and the Improvements with leasehold deeds of trust, mortgages, and regulatory and affordability agreements related to the Approved Loans without Lessor's consent (collectively, "**Liens**") provided that all documents evidencing such Liens are consistent with the terms and conditions of this Lease and the Financing Plan.

(a) For as long as there is any Lien securing any Approved Loan:

(1) Lessor shall not agree to any cancellation, termination (except for a termination for a default by Lessee which is not cured by Lessee or Lender in accordance with this Lease), or accept any surrender of this Lease, nor shall Lessor consent to any amendment or modification of this Lease without the prior written consent of the Lenders that have outstanding Approved Loans. In the event that Lessor receives competing or conflicting offers to cure any default under this Lease, Lessor shall accept the offers to cure in the following order: first, Lessee or the limited partner (or members, as applicable) therein, then each Lender in the same relative priority as their respective Liens.

(2) Notwithstanding any default by Lessee under this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall have given the Lenders that have outstanding Approved Loans written notice of such default and such Lenders shall have failed to remedy such default or acquire the Leasehold Estate or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section 8.2.

(3) Any Lender that has an outstanding Approved Loan shall have the right, but not the obligation, at any time to pay any or all of the Rent or Additional Rent due pursuant to the terms of this Lease, and do any other act or thing required of Lessee by the terms of this Lease, to prevent termination of this Lease. Lessor shall provide each Lender written notice of default concurrently with delivery of such notice to Lessee. Each Lender shall have the same period to cure such default as afforded to Lessee, extended by an additional thirty (30) days in the case of a monetary default, and by an additional sixty (60) days in the case of a nonmonetary default. The notice of default shall describe the action necessary to cure the default, and shall include, with respect to any monetary default, a detailed statement identifying the amounts due and the obligations to which amounts relate, and with respect to any non-monetary default, a detailed statement identifying the obligations breached and the cure expected by Lessor; provided, however, that if any nonmonetary default is not susceptible to cure within the applicable cure period, the Lender shall have such longer period, not to exceed an additional ninety (90) days, as may be necessary to cure the default, so long as such Lender is diligently prosecuting such cure to completion. All payments so made and all things so done shall be as

effective to prevent a termination of this Lease as the same would have been if made and performed by Lessee instead of by the Lender(s).

(4) In addition to the cure periods described in the preceding Paragraph (3), if the default is such that possession of the Leasehold Estate may be reasonably necessary to remedy the default, any Lender that has an outstanding Approved Loan shall have a reasonable time after the expiration of the applicable cure period described in the preceding Paragraph (3) within which to remedy such default, provided that (A) such Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease within the applicable period described in the preceding Paragraph (3) and shall continue to pay currently such monetary obligations when the same are due; (B) such Lender shall have acquired Lessee's Leasehold Estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within the period described in the preceding Paragraph (3), and shall be diligently prosecuting the same; and (C) and after acquiring possession of the Leasehold Estate, such Lender shall diligently prosecute to completion such cures as may be reasonably possible to remedy nonmonetary defaults existing under this Lease. Any default under this Lease which by its nature cannot be remedied by Lender shall be deemed remedied upon Lender or its Nominee (as hereinafter defined) acquiring Lessee's interest in the Premises as provided in this Section.

(5) Lessor shall promptly provide estoppel certificates reasonably requested by lenders or investors.

(6) If the Lenders are prohibited, stayed or enjoined by any bankruptcy or insolvency proceeding of any court, including without limitation a court having jurisdiction over Lessee in such proceeding, from commencing or prosecuting foreclosure proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease, including without limitation any monetary obligations to third parties which have become, or threaten to become, liens against the Leased Premises or any portion thereof, and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that, subject to Paragraph (1) of this Section 8.2(a), such Lender shall not interfere with Lessor's efforts to seek compliance by Lessee with any non-monetary obligation under this Lease.

(7) Lessor shall mail or deliver to any Lenders that have any outstanding Approved Loans a duplicate copy of any notice which Lessor may deliver to Lessee pursuant to this Lease, including any notice of default. Lessee shall deliver to Lessor the name and contact information for all Lenders that have outstanding Approved Loans, including successors in interest to Approved Loans. Provided Lessee (or Lender) has delivered Lessor the name and contact information of the Lender having an outstanding Approved Loan, no notice of default by Lessor to Lessee shall be effective as to that Lender unless and until a copy of the notice shall have been mailed or delivered to such Lender as set forth in this Section.

(8) The foreclosure of an Approved Loan, any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the leasehold mortgage securing the Approved Loan, or any conveyance of the Leasehold Estate created hereby from Lessee to a Lender through or in lieu of foreclosure (a "Foreclosure Event"), shall not require the

consent of Lessor or constitute a breach of any provision of this Lease. In the event any Lender or its Nominee (as defined herein) becomes Lessee under this Lease by such means or pursuant to any new lease obtained under Paragraph (9) of this Section 8.2(a) below, Lessor shall recognize the Lender or its Nominee as Lessee hereunder or under such new lease and the Lender shall be personally liable under this Lease or such new lease only for the period of time that the Lender or its Nominee remains Lessee thereunder, provided that the Lender or its Nominee attorns to Lessor and agrees to be subject to the restrictions of this Lease. If a Lender or its Nominee becomes the lessee under this Lease or any such new lease, the Lender shall have the right thereafter to assign or sublease this Lease or such new lease one time, provided that any assignee: (A) shall take the Leasehold Estate subject to all of the provisions of this Lease or such new lease, and (B) shall assume and agree to perform all obligations of Lessee under this Lease. Any further assignment shall be subject to the consent of Lessor, which consent shall not be unreasonably withheld. Nothing in this Section shall be construed to obligate any Lender to remedy any default of Lessee, and any failure of any Lender to complete any such cure after commencing the same shall not give rise to any liability of any Lender to Lessor or Lessee.

(9) In the event (A) a Lender, its designee or another purchaser in foreclosure proceedings becomes the legal owner of the Leasehold Estate, or (B) Lessor terminates this Lease by reason of any Event of Default (as defined herein), then, upon written request by Lender given within sixty (60) days after such transfer or receipt of notice of such termination of the Leasehold Estate, Lessor shall execute and deliver a new lease of the Leased Premises to such Lender, or its nominee, purchaser, assignee or transferee (the “**Nominee**”), provided that, except as provided in Paragraph (8) of this Section 8.2(a) if such Nominee is not the purchaser at a foreclosure sale and is not wholly owned by one or more Lenders, such Nominee is approved by Lessor in its reasonable discretion. Such new lease shall be substantially in the same form as this Lease, shall have a term equal to the remainder of the Lease Term with the same agreements, covenants, reversionary interests and conditions (except for any requirements which have been fulfilled by Lessee prior to termination) as are contained in this Lease and with priority equal to this Lease with respect to encumbrances of Lessor’s interest in the Land or the Leased Premises or encumbrances of Lessee’s interest in the Leased Premises permitted or caused by Lessor, together with any provisions legally required in the event the Nominee is a governmental entity; provided, however, that any defaults by Lessee susceptible to cure by the Lender have been cured or reasonable assurance has been provided to Lessor that such defaults shall be cured. Upon execution and delivery of such new lease by Lessor and the Nominee, the Nominee shall have acquired all the right, title and interest of Lessee under this Lease prior to its termination. Lessor, shall cooperate in taking such action as shall be necessary to cancel and discharge this Lease and to remove Lessee from the Leased Premises. After such termination and cancellation of the Lease and prior to the expiration of the period within which Lender or Nominee may elect to obtain a new lease from Lessor, Lessor shall refrain from terminating any existing sublease or otherwise encumbering the Premises without the prior written consent of Lender or Nominee. Any new lease granted hereby shall vest in Lender or Nominee all right, title, interest, power and privileges of Lessee hereunder in and to the Premises, including, without limitation, the assignment of Lessee’s interest in and to all then existing subleases and sublease rentals and the automatic vesting of title to all Improvements, fixtures and personal property of Lessee in Lender or Nominee. Such new lease shall provide, with respect to each and every permitted sublease that the new lessee shall be deemed to have recognized the sublessee under the sublease, pursuant to the terms of the

sublease as though the sublease had never terminated but had continued in full force and effect after the termination of the Lease, and to have assumed all the obligations of the sublessor under the sublease accruing from and after the termination of the Lease, except that the obligation of the new lessee, as sublessor, under any covenant of quiet enjoyment, expressed or implied, contained in any such sublease shall be limited to the acts of such new lessee and those claiming by, under or through such new lessee. If more than one Lender is entitled to a new lease pursuant to this Paragraph (9), Lessor shall enter into such new lease with the lender whose mortgage or deed of trust that has the highest lien priority.

(10) If a Lender or Nominee subsequently transfers its interest under this Lease after acquiring such interest by foreclosure or deed in lieu of foreclosure and, in connection with any such transfer, the transferee obtains a mortgage or deed of trust encumbering such leasehold interest to secure all or any portion of the purchase price given to the Lender or Nominee for such transfer, then such mortgage or deed of trust shall be considered an Approved Loan hereunder provided that Lessor has been provided an opportunity to review and approve the documents evidencing and securing such mortgage or deed of trust and the obligations secured thereby, and the Lender shall be entitled to receive the benefit of and to enforce the provisions of this Lease or the new lease approved pursuant Paragraph (9) of this Section 8.2(a).

(11) Unless the Lenders otherwise consent in writing, Lessor and Lessee each hereby waives, and agrees not to assert or otherwise take the benefit of, that portion of Section 365(d)4, or any other applicable provisions, of the United States Bankruptcy Code (11 U.S.C. Section 101 *et seq.*), which provides for the deemed rejection of a lease in certain circumstances, so long as the trustee is paying the rent due under the Lease and performs, or causes the performance of, the uses of the Leased Premises for the Project pursuant to this Lease.

(12) Subject to the rights of the Lenders, which shall have priority over all persons or entities given rights under this Paragraph (12), any Investor limited partners (or members, as applicable) of Lessee shall have the same rights as any Lender authorized under Paragraphs (2), (3) and (7) of this Section 8.2(a) of this Lease and any reference to a Lender in Paragraphs (2), (3) and (7) of this Section 8.2(a) shall be deemed to include such limited partners (or members, as applicable).

(13) Lessor shall cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any Lender or any proposed lender, for the purpose of implementing the mortgagee-protection provisions contained in this Lease and allowing such Lender or proposed lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security, and to include any additional rights and privileges reasonably requested to be added by such Lender. Lessor agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect Lessor's Estate or any other interest of Lessor in the Land or the Leased Premises, affect the Lease Term or rent under this Lease, or otherwise in any material respect adversely affect any rights of Lessor under this Lease.

(b) Any Leasehold Mortgage shall be subject to the provisions of this Lease and all rights of Lessor under this Lease. Notwithstanding any contrary provision of this Lease, in no event may any mortgage or other security instrument, including without limitation any Leasehold Mortgage, be recorded against Lessor's fee interest in the Land or reversionary interest in the Improvements without Lessor's prior written consent, which Lessor may grant or withhold in the exercise of Lessor's sole discretion.

(c) Intentionally omitted.

(d) Notwithstanding any contrary provision hereof, if prior to completion of construction of the Improvements, a Lender completes a foreclosure sale or accepts a deed in lieu of foreclosure, such Lender or Nominee may complete construction with modifications to the Construction Plans as necessary to make the Project economically feasible and as reasonably approved by the City of Pleasanton provided that such modifications will not result in a reduction in the number of residential units, a reduction in the number of on-site parking spaces, or a significant reduction in Project common space or amenities.

Section 8.3 Cost of Approved Loans to be Paid by Tenant. Lessee affirms that it shall bear all of the costs and expenses in connection with (a) the preparation and securing of the Approved Loans, (b) the delivery of any instruments and documents and their filing and recording, if required, and (c) all taxes and charges payable in connection with the Approved Loans.

Section 8.4 Proceeds of Approved Loans. It is expressly understood and agreed that all Approved Loan proceeds shall be paid to and become the property of Lessee, and that Lessor shall have no right to receive any such Approved Loan proceeds.

Section 8.5 Notice and Right to Cure Defaults Under Approved Loans. Upon the recording of a memorandum of this Lease, Lessor may record in the Official Records a request for notice of any default under each Approved Loan. In the event of default by Lessee under an Approved Loan, Lessee or Lessor shall have the right, but not the obligation, to cure the default in accordance with the Loan Documents. Any payments made by Lessor to cure a default shall be treated as Additional Rent due from Lessee hereunder, which shall be paid within thirty (30) days of the date on which the payment was made by Lessor.

Section 8.6 Rights of Investor. The Investor shall have the same notice and cure rights as any Lender for so long as it is a limited partner of Lessee; provided however, the references in this Section 8 to additional cure periods of Lender to permit Lender to foreclose shall instead refer to Investor's actions to remove the general partner of Lessee.

Section 8.7 Right to Pay Taxes and Senior Mortgage. All Lenders shall have the right (but not the obligation) to pay any taxes payable by Lessor with respect to the Leased Premises, and to cure any monetary or nonmonetary default by Lessor under any mortgage or other encumbrance on the Leased Premises; and, if a Lender does so pay or cure, Lessor agrees that it will reimburse the Lender for the amount thereof promptly following request by the Lender therefor.

ARTICLE 9.
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 9.1 Representations, Warranties and Covenants of Lessor. As an inducement to Lessee to enter into and proceed under this Lease, Lessor warrants and represents to Lessee as follows, which warranties, representations and covenants are true and correct as of the date of this Lease, to the actual knowledge of Lessor:

(a) Lessor has good and marketable, fee simple title to the Leased Premises, subject only to encumbrances of record or disclosed in writing to Lessee (“**Permitted Encumbrances**”), and has the right, power and authority to enter into this Lease and to lease the Leased Premises to Lessee in accordance with the terms, provisions and conditions contained in this Lease, and no other party has any right or option to or in connection with Lessor’s interest in the Leased Premises; and Lessor shall not encumber the fee interest in the Leased Premises without Lessee’s prior written consent.

(b) there is no litigation or action, pending or threatened, affecting the Leased Premises or any streets or other public rights-of-way abutting or serving the Leased Premises;

(c) Lessor has received no written notice and has no knowledge, nor has Lessor been otherwise advised, of any pending or threatened Taking relating to all or any part of the Leased Premises;

(d) Lessor has received no written notice and has no actual knowledge of the intention of any party holding an easement affecting the Leased Premises or any part thereof to expand the exercise of any such easement beyond the current scope permitted by the applicable Permitted Encumbrance;

(e) the entry by Lessor into this Lease with Lessee and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreement relating to the Leased Premises to which Lessor is a party or by which it is bound, including, without limitation, the Permitted Encumbrances;

(f) except as disclosed to Lessee or as is apparent from Lessee’s inspection, there is no tenant, lessee or other occupant of the Leased Premises having any right or claim to possession or use of the Leased Premises;

(g) there are no unpaid special assessments of which Lessor has received notice for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures affecting the Leased Premises;

(h) there are no outstanding notices of, nor, to Lessor’s knowledge, any violations of any Legal Requirements affecting any portion of the Leased Premises that materially affect the development of the Improvements;

(i) To Lessor’s actual knowledge, neither the Leased Premises nor any part thereof has been used for the disposal of refuse or waste, or for the generation, processing,

manufacture, storage, handling, treatment, transportation or disposal of any Hazardous Materials. To Lessor's actual knowledge, no Hazardous Materials have been installed, used, stored, handled, or located on or beneath the Leased Premises, which Hazardous Materials, if found on or beneath the Leased Premises, or improperly disposed of away from the Leased Premises, would subject the owner or occupant of the Leased Premises to damages, penalties, liabilities or an obligation to perform any work, cleanup, removal, repair, construction, alteration, demolition, renovation or installation in or in connection with the Leased Premises ("**Environmental Cleanup Work**") in order to comply with any Legal Requirements applicable to Hazardous Materials. To Lessor's actual knowledge, there is no notice from any Governmental Authority or any Person, claiming any violation of any Legal Requirement pertaining to Hazardous Materials or any liability thereunder, or requiring or calling any attention to the need for any Environmental Cleanup Work on or in connection with the Leased Premises, and neither Lessor, its agents or employees has ever been informed of any threatened or proposed serving of any such notice of violation or corrective work order. To Lessor's actual knowledge, no part of the Leased Premises is affected by any "**Hazardous Materials Contamination,**" which for purposes hereof, shall mean (i) the contamination of any improvement, facilities, soil, subsurface strata, ground water, ambient air, biota or other elements on or of the Leased Premises by Hazardous Materials, or (ii) the contamination of the buildings, facilities, soil, subsurface strata, ground water, ambient air, biota or other elements on, or of, any other property as a result of Hazardous Materials emanating from the Leased Premises.

Section 9.2 Representations, Warranties and Covenants of Lessee. As an inducement to Lessor to enter into and to proceed under this Lease, Lessee warrants and represents to Lessor as follows, which warranties, representations and covenants are true and correct as of the date of this Lease:

(a) Authority. Lessee has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease;

(b) No Breach of Obligations. The entry by Lessee into this Lease and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreements to which Lessee is a party or by which it is bound.

Section 9.3 Hazardous Materials. Lessee (i) shall not cause or permit any Hazardous Materials to be placed, held, located or disposed of on, under or at the Leased Premises or any part thereof, except in commercially reasonable amounts used in the construction and operation of the Improvements and in accordance with Legal Requirements, and (ii) shall not cause or permit any Hazardous Materials contamination of the Leased Premises or any part thereof.

Section 9.4 Intentionally omitted.

Section 9.5 Hazardous Materials Indemnification. From and after the Commencement Date, Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Lessor) the Indemnitees from and against any and all Claims arising directly or indirectly, in whole or in part, out of (i) any activity by Lessee, its affiliates or its

agents or contractors carried on or undertaken on or off the Leased Premises in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials located or present in, on, under or about the Leased Premises; or (ii) the failure of Lessee to comply with any Environmental Laws relating to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation, or disposal of Hazardous Materials into, on, under or from the Leased Premises, except to the extent any such Claim arises from the gross negligence or willful misconduct of the Indemnitees. The provisions of this Section shall survive the expiration or termination of this Lease.

Section 9.6 Prevailing Wage Requirements. Lessee and its contractors, subcontractors and agents shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (and if applicable due to financing sources for the Project, with the federal Davis Bacon Act and implementing regulations) (all of the foregoing, collectively, “**Prevailing Wage Laws**”), and shall be responsible for carrying out the requirements of such provisions. To the greatest extent allowed by law, Lessee shall indemnify, defend (with counsel approved by Lessor) and hold the Indemnitees harmless from and against all Claims which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in connection with the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Lease, including but not limited to the Prevailing Wage Laws, or any act or omission of Lessee related to this Lease with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

Section 9.7 Compliance with Laws. Lessee shall carry out and shall cause its contractors and subcontractors to carry out the construction of the Project, and shall operate the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations (“**Applicable Laws**”), including without limitation, all applicable federal and state labor laws and standards, Section 3 of the Housing and Community Development Act of 1974, as amended (if applicable), applicable provisions of the California Public Contracts Code (if any), the City’s zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City’s Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* To the greatest extent allowed by law, Lessee shall indemnify, defend (with counsel approved by Lessor) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Lessee’s obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. This Section shall survive the expiration or termination of this Lease.

Section 9.8 Affordability and Use Restrictions. Lessee hereby covenants and agrees that the Leased Premises shall be used solely for the operation of a multifamily rental supportive

housing development in compliance with the requirements set forth herein and in the Regulatory Agreement. Throughout the Term: not less than six (6) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than twenty percent (20%) of Area Median Income, not less than an additional three (3) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than forty percent (40%) of Area Median Income, not less than an additional fourteen (14) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than fifty percent (50%) of Area Median Income, and not less than an additional six (6) of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than sixty percent (60%) of Area Median Income. Two (2) residential units shall be manager/staff units that will not be subject to rent or occupancy restrictions. Developer shall comply with rent and occupancy restrictions imposed by all applicable financing sources and regulatory agencies if such agencies impose requirements on the Project that are more stringent than those set forth in this Agreement.

In the event that recertification of tenant incomes indicates that the number of residential units actually occupied by Eligible Households falls below the number reserved for each income group as specified in this Section 9.8, Lessee shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) until the required income mix is achieved.

Section 9.9 Preference for City of Pleasanton Residents and Employees. In order to ensure that there is an adequate supply of affordable housing within the City of Pleasanton for residents and employees of businesses within the City, to the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, Lessee shall give a preference in the rental of the residential units in the Project to Eligible Households who live or work in the City of Pleasanton. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, or HUD regulations applicable to the Project (including without limitation, requirements applicable to the Project due to any Section 8 rental subsidy contract), the provisions of such Section 42 and HUD regulations and requirements shall control. Lessee shall comply with City's Affirmative Marketing Policies or other rental policies and procedures as they may be amended from time to time to ensure that residents and people who work in Pleasanton are provided reasonable notice and opportunity to rent units in the Project.

Section 9.10 Reporting Requirements; Access to Information; Inspections.

(a) Tenant Certification. Lessee or Lessee's authorized agent shall obtain from each household prior to initial occupancy of each residential unit in the Project (except the manager's unit), and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as Lessor may reasonably require: (i) the identity of each household member; (ii) the total gross household income; and (iii) verification that the household qualifies as an Eligible Household.

(b) Annual Report. Following completion of construction of the Project, on each June 1 during the term of this Lease, Lessee shall submit an annual report ("**Annual Report**") to the Lessor in form satisfactory to Lessor, together with a certification that the

Project is in compliance with the requirements of this Lease. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Paragraph (a). Lessee shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as Lessor may reasonably request from time to time in order to demonstrate compliance with this Lease. The Annual Report shall conform to the format requested by Lessor; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Lessee may satisfy the requirements of this Section that pertain to tenant income certification and rents by providing Lessor with a copy of compliance reports required in connection with such financing.

In addition to the information described above, the Annual Report shall include the following:

- (i) A Project income and expense statement for the reporting period;
 - (ii) Proposed annual budget for the next fiscal year which sets forth Lessee's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;
 - (iii) A report on maintenance and other issues anticipated to affect the current budget needs of the Project as well as the amount in the Project's reserve accounts and the amount expected to be needed for major repairs or other needs during the new fiscal year;
 - (iv) Information on the status of the waiting list for units, including the number of households on the list; and
 - (v) A financial audit of the books and records of the Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant.
 - (vi) Lessor may, from time to time request additional or different information, and Lessee shall promptly supply such information in the reports required hereunder.
- (c) Maintenance of Records, Inspections. Lessee shall maintain copies of tenant leases, income certifications and other matters related to the leasing of the residential units in the Project for a period of five (5) years after the final date of occupancy by the tenant. Lessee shall provide Lessor and its authorized agents and representatives access to any books, documents, papers and records of the Project for the purpose of making audits, examinations, excerpts and transcriptions. With 48-hours' notice, during normal business hours and as often as may be deemed necessary, Lessor and its authorized agents and representatives shall be permitted access to and the right to examine the Improvements and the Leased Premises and to

interview employees of the Project, for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Lease.

Section 9.11 Non-Discrimination; Compliance with Fair Housing Laws. Lessee shall not restrict the rental, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Leased Premises, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Lessee covenants for itself and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Lessee or any person claiming under or through Lessee 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 in, of, or for the Property or part thereof. Lessee shall include such provision in all leases and rental agreements affecting the Leased Premises or part thereof, and shall enforce the same diligently and in good faith. Nothing in this Section 9.11 is intended to prevent the reservation of residential units in the Project for occupancy by households that include one or more members that have a developmental disability as defined in subdivision 4512(a) of the California Welfare and Institutions Code.

Section 9.12 Fair Housing. Lessee shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Lessee shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

Section 9.13 Management Entity. Lessor approves _____ as the initial property manager. In recognition of Lessor's significant financial contribution to the Project, Lessor shall have the right to review and approve any replacement of the management entity proposed by Lessee for the Project, and shall have the right to review and approve any agreement executed between Lessee and the management entity, which approval of agreement shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Lessee of its primary responsibility for proper performance of management duties. Upon Lessor determination and delivery of written notice to Lessee that Lessee has failed to operate the Project in accordance with this Lease, Lessor may, subject to any applicable cure period, require Lessee to contract with a qualified management agent selected by Lessor subject to approval of the Investor and Lenders, if required, to operate the Project, or to make such other arrangements as Lessor deems necessary to ensure performance of the required functions.

ARTICLE 10. EMINENT DOMAIN

Section 10.1 Termination of Lease. Lessor and Lessee agree that, in the event of a Taking such that Lessee reasonably determines that the Leased Premises cannot continue to be

operated, at reasonable cost, for its then-current use, then, subject to the rights and consent of Lenders, this Lease shall, at Lessee's sole option, terminate as of the date of the Taking.

Section 10.2 Continuation of Lease and Presumption of Restoration. Lessor and Lessee agree that, in the event of Taking that does not result in the termination of this Lease pursuant to Section 10.1 above, this Lease shall continue in effect as to the remainder of the Leased Premises, and the Net Condemnation Award will be disbursed in accordance with Section 10.4 below to Lessor and Lessee and/or any Lender, if the terms of the applicable Leasehold Mortgage so require, and shall be used so as to make the same as complete, unified and efficient operating unit as nearly as reasonably possible to the condition existing prior to the Taking, subject to any applicable requirements of the Lender.

Section 10.3 Temporary Taking. If there shall be a temporary Taking with respect to all or any part of the Leased Premises or of Lessee's interest in this Lease, then the Term shall not be reduced and Lessee shall continue to pay in full all Rents, Impositions and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Lessee shall not be required to perform such obligations that Lessee is prevented from performing by reason of such temporary Taking.

Section 10.4 Apportionment of Award. If there is a Taking, whether whole or partial, Lessor and Lessee shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration Lessor's fee interest in the Land (as encumbered by this Lease) and reversionary interest in the Improvements upon the expiration of the Term or termination of this Lease. If the Leased Premises are restored as is contemplated in Section 10.2 above, Lessee shall be entitled to recover the costs and expenses reasonably incurred in such restoration out of any Net Condemnation Award payable to Lessee. Thereafter, if the condemning authority does not make separate awards, the Parties agree that any Net Condemnation Award will be allocated as follows on a proportionate basis reflecting the Parties' respective interests in the Land and Improvements and the remaining duration of the Term as follows:

(A) Award on Total or Substantial Taking. In the event of a total or substantial taking, the award shall be apportioned as follows, in the following order:

(a) To the Lenders in an amount equal to the amounts owing on the Leasehold Mortgages.

(b) To Lessor that portion of the award equal to the fair market value of the Land.

(c) To Lessee, that portion of the award equal to the fair market value of the Improvements (subject to Lessor's reversionary interest), less the amount paid to the Lenders pursuant to (a) above.

(d) Any "bonus value" (i.e., any portion of the award attributable to the fact that the rent payable by Lessee under this Lease is at a below market rate) shall be paid to

Lessor; provided however, if the condemning agency is Lessor, any such “bonus value” shall be equally divided between Lessor and Lessee.

(e) The balance, if any, shall be allocated between Lessor and Lessee respectively in that proportion in which (i) the fair market value of the Land bears to (ii) the fair market value of the Improvements, exclusive of Lessor’s reversionary interest.

(B) Award on Partial Taking. In the event of a partial taking, after application of the Award for restoration, any remaining portion of such award shall be apportioned as follows, in the following order:

(a) To the Lenders in an amount equal to the amounts owing on the Leasehold Mortgages.

(b) To Lessor, that portion of the award attributable to the fair market value of the portion of the Land taken.

(c) To Lessee, that portion of the award equal to the fair market value of the portion of the Improvements taken (subject to Lessor’s reversionary interest), less the amount paid to the Lenders pursuant to (a) above, but only to the extent that the proceeds of the award are not used for restoration of the Improvements.

(d) Any “bonus value” (i.e., any portion of the award attributable to the fact that the rent payable by Lessee under this Lease is at a below market rate) shall be paid to Lessor; provided however, if the condemning agency is Lessor, any such “bonus value” shall be equally divided between Lessor and Lessee.

(e) The balance, if any, shall be allocated between Lessor and Lessee respectively in that proportion in which (i) the fair market value of the Land bears to (ii) the fair market value of the Improvements exclusive of the reversionary interest of Lessor.

(f) Any severance damages awarded or payable because only a portion of the Land and Improvements are taken by eminent domain shall be (a) paid to Lessee during the first 37.5 years of this Lease and (b) equally divided between Lessee and Lessor during the next 37.5 years of this Lease (except to the extent needed to replace any Improvements taken by eminent domain with equivalent Improvements on the remainder of the Land).

(C) Award for Temporary Taking. Any award for a temporary taking shall, subject to the rights of any Lender, be awarded and retained by Lessee.

(D) Rent Abatement for Partial Taking. In the event of any partial taking of the Improvements, commencing upon the date of the final order of condemnation, Rent payable under this Lease shall be reduced by the percentage equal to the square footage of the condemned portion of the Improvements divided by the total square footage of the Improvements prior to the taking.

Section 10.5 Joinder. If a Leasehold Mortgage exists, the Lenders, to the extent permitted by law, shall be made a party to any Taking proceeding.

Section 10.6 City Reservation of Rights. Notwithstanding any provisions in this Lease to the contrary, nothing herein does or shall be construed to limit or require the City to exercise its ability to condemn any property, including the Leased Premises, in accordance with applicable law. Nothing in this Lease does or shall be construed as requiring the City to pay to Lessee, any Lender, or any other third party with an interest in the Leased Premises, any amount of money, as compensation for alleged condemnation or otherwise, if City (or its successor) seeks to enforce any of the rights and obligations under this Lease and any executed attachments thereto. Except when City exercises its ability to condemn the Leased Premises by adoption of a resolution of necessity and pursuant to other provisions of applicable law, City shall not be a construed as pursuing or effectuating a Taking or acting as a “condemning authority” under this Lease.

ARTICLE 11. DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction to Leased Premises. Lessee shall give prompt written notice to Lessor after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Leased Premises, the Improvements or any portion thereof (hereinafter sometimes referred to as “Casualty”). Subject to Section 11.2 below, if during the Term the Improvements shall be damaged or destroyed by Casualty, Lessee shall repair or restore the Improvements, so long as Lessee determines, in its sole discretion, that it is feasible to do so and in such event Lessee provides or causes to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration. Upon the occurrence of any such Casualty, Lessee, promptly and with all due diligence, shall apply for and collect all applicable insurance proceeds recoverable with respect to such Casualty, for the benefit of the Lenders. In the event that Lessee shall determine, with Investor’s prior written consent during the Compliance Period (as defined in Section 42 of the Code), subject to the rights of the Lenders, by notice to Lessor given within thirty (30) days after receipt by Lessee of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Leased Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then, subject to the written approval of Lenders, Lessee may terminate this Lease as of a date that is not fewer than thirty (30) days after the date of such notice. If Lessee terminates this Lease pursuant to this Section 11.1, Lessee shall surrender possession of the Leased Premises to Lessor immediately and assign to Lessor (or, if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in and to the proceeds from Lessee’s insurance upon the Leased Premises, subject to the prior rights of any Lender therein, as referenced in Section 11.3 below.

Section 11.2 Damage or Destruction Near End of Term. If, during the last seven (7) years of the Term, the Improvements shall be damaged by Casualty, then Lessee shall have the option, to be exercised within one hundred twenty (120) days after such Casualty:

(a) to repair or restore the Improvements as hereinabove provided in this Article 11; or

(b) subject to the rights and approval of Lenders, to terminate this Lease by notice to Lessor, which termination shall be deemed to be effective as of the date of Casualty. If Lessee terminates this Lease pursuant to this Section 11.2, Lessee shall surrender possession of the Leased Premises to Lessor immediately and assign to Lessor (or, if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Leased Premises, subject to the prior rights of any Lender therein, as referenced in Section 11.3 below.

Section 11.3 Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to Sections 11.1 or 11.2 hereof, the insurance proceeds received as the result of such Casualty shall be distributed as follows: (a) first, if Leasehold Mortgage(s) are in place, to the Lenders to the extent of any indebtedness then owed to such Lender in order of the Lien priority of the Leasehold Mortgages; (b) second, the balance, if any, of such insurance proceeds shall be paid to Lessee or, as applicable pursuant to Sections 11.1 and 11.2 above, assigned or paid over to Lessor.

Section 11.4 Insurance Requirements. Nothing in this Article 11 does or shall be construed as permitting Lessee to maintain less than the minimum insurance requirements set forth in this Lease.

ARTICLE 12. EVENTS OF DEFAULT

Section 12.1 Events of Default. Each of the following shall be an "Event of Default" by Lessee hereunder:

(a) failure by Lessee to pay any Rent or Additional Rent when due if such failure shall continue for a period of thirty (30) days after notice thereof has been given by Lessor to Lessee;

(b) Lessee's default in the performance of any term, provision or covenant under this Lease (other than an obligation enumerated in this Section 12.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for thirty (30) days in the event of a monetary default or sixty (60) days in the event of a non-monetary default following the date upon which Lessor shall have given written notice of the default to Lessee, or if the nature of any such non-monetary default is such that it cannot be cured within sixty (60) days, Lessee's failure to commence to cure the default within sixty (60) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than one hundred twenty (120) days from receipt of the notice of default;

(c) Lessee's failure to maintain insurance on the Leased Premises and the Improvements as required hereunder, and the failure of Lessee to cure such default within five (5) days;

(d) Subject to Lessee's right to contest the following charges, Lessee's failure to pay taxes or assessments due on the Leased Premises or the Improvements or failure to pay any other charge that may result in a lien on the Leased Premises or the Improvements, and Lessee's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(e) A Transfer (other than a Permitted Transfer) occurs, either voluntarily or involuntarily, in violation of this Lease;

(f) the subjection of any right or interest of Lessee in this Lease to attachment, execution, or other levy, or to seizure under legal process, if not released within ninety (90) days;

(g) Lessee shall have voluntarily suspended its business for a period in excess of thirty (30) days for reasons other than Force Majeure, or Lessee shall have been dissolved or terminated;

(h) Intentionally omitted.

(i) the appointment of a receiver, to take possession of Lessee's Estate or of Lessee's operations on the Leased Premises for any reason, if such receivership is not terminated dismissed or vacated within ninety (90) days after the appointment of the receiver;

(j) pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Lessee or any general partner thereof-(i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Lessee or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Lessee or any general partner thereof or for the Leased Premises; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due; provided however, with respect to Lessee's general partner, the foregoing actions shall not constitute an Event of Default if the Investor promptly takes action to replace the general partner;

(k) the filing against Lessee of any involuntary proceedings under such Bankruptcy Code or similar law, if such proceedings have not been vacated or stayed within ninety (90) days of filing;

(l) the appointment of a trustee or receiver for Lessee or for all or the major part of Lessee's property or the Leased Premises, in any involuntary proceeding, or the taking of jurisdiction by any court over all or the major part of Lessee's property or the Leased Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Lessee, if such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ninety (90) days;

(m) any of Lessee's representations or warranties contained in this Lease or in any financial statement, certificate or report submitted to Lessor in connection with this Lease proves to have been incorrect in any material and adverse respect when made and continues to be

materially adverse to Lessor beyond the expiration of the applicable cure period specified in Paragraph (b) above.

Section 12.2 Rights and Remedies.

(a) At any time after the occurrence of an Event of Default hereunder, subject in all respects to the provisions of this Lease with respect to Lessor's rights to cure defaults by Lessee and with respect to the rights of any Lenders, Lessor may, in addition to any other rights and remedies available at law or in equity, terminate this Lease by giving Lessee written notice thereof (with a copy of such notice to the Lenders), setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and Lessee's Estate created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, Lessor, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Leased Premises (including all buildings and other Improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches of covenants; provided that Lessor shall not be entitled to disturb possession of any Tenants or others in possession pursuant to Tenant Leases with Lessee so long as such Tenant or others are not in default thereunder and attorn to Lessor as their lessor.

(b) Upon the exercise of Lessor's remedies pursuant to this Section 12.2, Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request in order to accurately set forth of record the then current status of Lessee's Estate and Lessee's rights hereunder.

(c) If Lessee shall have failed to cure a default by Lessee after expiration of the applicable time for cure of a particular default, Lessor, at its election, but without obligation therefor (i) may seek specific performance of any obligation of Lessee, after which Lessor shall retain, and may exercise and enforce, any and all rights that Lessor may have against Lessee as a result of such default, (ii) from time to time without releasing Lessee in whole or in part from the obligations to be performed by Lessee hereunder, may cure the default at Lessee's cost, (iii) may terminate this Lease pursuant to Paragraph (a) above, (iv) subject to the rights of Lenders, may have a receiver appointed to take possession of Lessee's interest in the Leasehold Estate with power in the receiver (1) to administer Lessee's interest in the Leasehold Estate, (2) to collect all funds available in connection with the operation of the Project, and (3) to perform all other acts consistent with Lessee's obligations under this Lease, as the court deems proper, and/or (v) may exercise any other remedy given hereunder or now or hereafter existing at law or in equity. Any reasonable cost incurred by Lessor in order to cure such a default by Lessee shall be due immediately from Lessee, together with interest, and may be offset against any amounts due from Lessor to Lessee.

(d) Remedies Cumulative. No remedy provided in this Section shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in

addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations referred to hereinabove.

(e) No Election of Remedies. The rights given in this Section to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of Lessor upon the conditions and subject to the provisions in this Lease to terminate Lessee's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Lease beyond the applicable cure period.

(f) Survival of Obligations. Nothing herein shall be deemed to affect the right of Lessor to indemnification for liability arising prior to the termination of the Lease for personal injuries or property damage or in connection with any other Claim, nor shall anything herein be deemed to affect the right of Lessor to equitable relief where such relief is appropriate. No expiration or termination of this Lease by operation of law or otherwise, and no repossession of the Leased Premises or any part thereof, shall relieve Lessee of any of its obligations to indemnify and defend the Indemnitees pursuant to the provisions of this Lease, and all such provisions, and all of Lessee's accrued liabilities and obligations hereunder, shall survive such expiration, termination or repossession.

(g) No Waiver. Except to the extent that Lessor may have agreed in writing, no waiver by Lessor of any breach by Lessee of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation, nor shall any forbearance by Lessor to seek a remedy for any breach by Lessee be deemed a waiver by Lessor of its rights or remedies with respect to such breach.

Section 12.3 Default by Lessor.

(a) Events of Default. Lessor shall be in default of this Lease if it fails to perform any provision of this Lease that is obligated to perform or if any Lessor's representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty is not cured within sixty (60) days after written notice of the default has been given to Lessor. If the default cannot reasonably be cured within sixty (60) days, Lessor shall not be in default of this Lease if Lessor commences to cure the default within such 60-day period and diligently and in good faith continues to cure the default until completion.

(b) Right to Cure; Lessee's Remedies. If Lessor shall have failed to cure a default by Lessor after expiration of the applicable time for cure of a particular default, Lessee, at its election, but without obligation therefor (i) may seek specific performance of any obligation of Lessor, after which Lessee shall retain, and may exercise and enforce, any and all rights that Lessee may have against Lessor as a result of such default, (ii) from time to time without

releasing Lessor in whole or in part from the obligation to be performed by Lessor hereunder, may cure the default at Lessor's cost provided that Lessor has been given sixty (60) days advance written notice of Lessee's election to do so and Lessor has not within such time notified Lessee that Lessor will cure the default, and/or (iii) may terminate this Lease, subject to any required consent of any Lender.

Section 12.4 Notices. Notices given by Lessor under Section 12.1 or by Lessee under Section 12.4 shall specify the alleged default and the applicable Lease provisions, and shall demand that Lessee or Lessor, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Lease unless expressly set forth in such notice.

ARTICLE 13. QUIET ENJOYMENT AND POSSESSION; INSPECTIONS

Section 13.1 Quiet Enjoyment. Lessor covenants and warrants that Lessee, upon payment of all sums herein provided and upon performance and observance of all its covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Leased Premises during the Term, subject only to the provisions of this Lease and all applicable Legal Requirements.

Section 13.2 Lessor's Right of Inspection. Notwithstanding Section 13.1 above, Lessor, in person or through its agents, upon reasonable prior notice to Lessee, shall have the right, subject to the rights of Tenants, to enter upon the Leased Premises for purpose of reasonable inspections performed during reasonable business hours in order to assure compliance by Lessee with its obligations under this Lease.

ARTICLE 14. VACATION OF LEASED PREMISES

Section 14.1 Vacation Upon Termination. Lessee covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Lessee will peaceably and quietly yield and surrender possession of the Leased Premises to Lessor. The foregoing, however, will be subject to the rights of Tenants or others in possession pursuant to Tenant Leases with Lessee, provided that such Tenants are not in default thereunder and attorn to Lessor as their lessor. An action of forcible detainer shall lie if Lessee holds over after a demand for possession is made by Lessor.

ARTICLE 15. NON-MERGER

Section 15.1 Non-Merger. Except upon expiration of the Term or upon termination of this Lease, there shall be no merger of either this Lease or Lessee's Estate created hereunder with Lessor's fee interest in the Land or Lessee's fee interest in the Improvements by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Lease, Lessee's

Estate created hereunder or any interest in this Lease or the Improvements, and (b) a fee interest in the Land or the Improvements, unless and until the Lessor, all Lenders with an Approved Loan and all persons, including any assignee of Lessor, having an interest in (i) this Lease or Lessee's Estate created hereunder, and (ii) the fee estate in the Leased Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE 16.
TRANSFERS

Section 16.1 Permitted Transfer by Lessee.

(a) Except as provided in this Article 16, Lessee shall have no right to Transfer, assign or sublease any legal or beneficial interest in Lessee's Estate hereunder without Lessor's prior written consent, which shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, by its execution of this Lease, Lessor is deemed to have consented to the following ("**Permitted Transfers**"):

(1) Permitted Encumbrances, Approved Loans and Leasehold Mortgages;

(2) a conveyance of the leasehold interest in the Lessee's Estate resulting from the foreclosure of a Leasehold Mortgage (or an assignment, new lease or deed-in-lieu of such a foreclosure) and the transfer by such person to a third party subject to the provisions of Paragraph (8) of Section 8.2(a);

(3) any transfer of equity in the Lessee that does not change management or operational control of Lessee or the Project other than to permit the admittance of an affiliate of _____ as the managing general partner of Lessee;

(4) the lease of the residential units consistent with the Tax Credit Restrictive Covenant and the Regulatory Agreement;

(5) the transfer of limited partnership interests in Lessee;

(6) in the event that any general partner of Lessee is removed by the Investor for cause following default under Lessee's partnership agreement, the transfer of the general partner interest to an affiliate of the Investor for an interim period of not more than 180 days or to a 501(c)(3) tax-exempt nonprofit corporation selected by the Investor and approved by Lessor, in its reasonable discretion, provided that the successor nonprofit corporation has experience, assets and access to capital and private funding sufficient to construct (if the Project has not been fully constructed) and operate the Project in accordance with this Lease; and

(7) the transfer of the Project from Lessee to one of the general partners of the Lessee or an affiliate of the general partners of the Lessee at the end of the tax credit compliance period for the Project.

(b) Upon the granting of any consent (deemed or otherwise) by Lessor with respect to a Transfer by Lessee, this Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective heirs, successors, assigns, legal representatives, Lenders, Tenants and other transferees.

ARTICLE 17.
MISCELLANEOUS PROVISIONS

Section 17.1 Consents. Lessor agrees not to unreasonably withhold or delay its consent to matters requiring Lessor's consent hereunder unless the applicable provision of this Lease permits Lessor to exercise Lessor's sole discretion with respect to a particular matter.

Section 17.2 Enforced Delay; Extension of Times of Performance. Time is of the essence in the performance of each of the Parties' respective obligations set forth in this Lease. Except as expressly set forth in this Section 17.2, performance by any Party hereunder shall not be deemed to be in default and such Party shall be entitled to an extension of time to perform its obligations hereunder where delays in performance are due to causes beyond the reasonable control and without the fault of such Party, including as applicable: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplies that are not caused by any Party; acts of the other Parties; acts or the failure to act of any public or governmental agency or entity that are not caused by Lessee; or other causes beyond the reasonable control of the Party ("Force Majeure"). Notwithstanding the foregoing, Lessee's inability to secure satisfactory financing, interest rates, and market and economic conditions shall not entitle Lessee to an extension of time to perform. An extension of time for any cause permitted under this Section 17.2 shall be limited to the period of the enforced delay, which period 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 knowledge of the commencement of the cause. If no written notice is sent within thirty (30) days, for purposes of measuring the extension period for performance of the obligation in question, the period of the enforced delay shall commence to run from the date written notice is sent to the other Party. Times of performance under this Lease may be extended by mutual written agreement of the Parties.

Section 17.3 Interpretation. The terms of this Lease shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Lease or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Lease.

Section 17.4 Entire Agreement: Modifications. This Lease supersedes all prior discussions and agreements between the Parties with respect to the leasing of the Leased Premises. This Lease, the DDLA and executed attachments hereto, and the Regulatory Agreement contain the sole and entire understanding between the parties with respect to the

leasing of the Leased Premises and the development and operation of the Project. This Lease shall not be modified or amended in any respect, except by written instrument specifically referencing such modification or amendment which is executed by or on behalf of the Parties in the same manner as this Lease is executed and to which each Lender has consented in writing (if required by the applicable Loan Documents).

Section 17.5 Governing Law. This Lease, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the substantive laws of the State of California without regard to conflict of law principles. Venue for any dispute hereunder shall be in Alameda County, California.

Section 17.6 Binding Effect. This Lease shall inure to the benefit of and be binding upon the Parties hereto, their successors, administrators, executors and permitted assigns.

Section 17.7 Severability. In the event any provision or portion of this Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof, except to the extent the rights and obligations of the parties have been materially altered by such unenforceability.

Section 17.8 Further Assurances. From and after the date of this Lease, Lessor and Lessee, at the request of the other Party, shall make, execute and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Lease.

Section 17.9 Authority to Execute Agreement. The persons executing this Lease on behalf of each Party represents and warrants to the other Party that by proper action such persons have been duly authorized to execute and deliver this Lease.

Section 17.10 Lease Administration and Approvals. The City Manager of the City of Pleasanton, or his or her designee shall be the person designated by Lessor to administer this Lease on behalf of Lessor. The City Manager of the City of Pleasanton shall have the authority to consent to any matter requiring Lessor approval or consent as provided in this Lease, and to perform and carry out any activities concerning this Lease, including but not limited to, the execution of any additional agreements, addenda or amendments so long as such actions do not substantially affect the rights and obligations of Lessor as specified herein.

Section 17.11 Captions. All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular articles, sections, subsections, paragraphs and subparagraphs by number refer to the text of such items as so numbered in this Lease.

Section 17.12 Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

Section 17.13 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

Section 17.14 References. All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Lease. Unless otherwise specified in this Lease, the terms “herein,” “hereof,” “hereinafter,” “hereunder” and other terms of like similar import, shall be deemed to refer to this Lease as a whole, and not to any particular paragraph or subparagraph hereof.

Section 17.15 Cumulative. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

Section 17.16 Notices. All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by certified mail, return receipt requested; by reputable commercial delivery service; or by hand delivery by a reputable courier, to each Party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the item was returned as undeliverable. By giving prior written notice thereof, any Party, from time to time, may change its address for notices under this Lease.

To Lessor: City of Pleasanton
 123 Main Street
 Pleasanton, CA 94566-0802
 Attention: City Manager

With copies to: Burke, Williams & Sorensen, LLP
 1901 Harrison Street, 9th floor
 Oakland, CA 94612
 Attention: Susan E. Bloch, Esq.

To Lessee:

With copies to

Section 17.17 Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

Section 17.18 Time of Essence. Time is and shall be of the essence in this Lease.

Section 17.19 Attorneys' Fees. In any litigation or other action brought to enforce this Lease or regarding a dispute over terms of the Lease or the performance of a Party, the prevailing party in such litigation or action shall be entitled to attorneys' fees and the costs of such litigation.

Section 17.20 No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Lease is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

Section 17.21 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Lease is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Lessee and Lessor is and shall remain solely that of a tenant and landlord, and shall not be construed as a joint venture, equity venture, partnership or any other relationship. Lessor neither undertakes nor assumes any responsibility or duty to Lessee (except as expressly provided in this Lease) or to any third party with respect to the Project.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, this Lease is made and entered into in multiple original counterparts on the day and year first above written.

LESSOR:

City of Pleasanton, a California municipal corporation

By: _____
Nelson Fialho, City Manager

LESSEE:

EXHIBIT A

Legal Description of Leased Premises

The land referred to is situated in the County of Alameda, City of Pleasanton, State of California, and is described as follows:

EXHIBIT B

**Site Plan of Leased Premises
(Attached)**

EXHIBIT C

Form of Memorandum of Lease

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Pleasanton
123 Main Street
Pleasanton, CA 94566
Attention: City Manager

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

**MEMORANDUM OF GROUND LEASE
(Sunflower Hill)**

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is dated as of _____, 20__, and is executed by and between the City of Pleasanton, a California municipal corporation (the "**Lessor**") and _____, L.P., a California limited partnership (the "**Lessee**"), with respect to that certain Ground Lease dated as of _____, 20__ (the "**Lease**"), between the Lessor and the Lessee. All capitalized terms used in this Memorandum and not defined shall have the meaning set forth in the Lease.

1. Documentary Transfer Tax is not shown pursuant to Revenue and Taxation Code Section 11932. See that certain Statement of Documentary Transfer Tax Due, which shall be affixed to this Memorandum in the Official Records of Alameda County after record of this Memorandum is made and before the original is returned as specified in Government Code Section 27321.
2. Pursuant to the Lease, Lessor leases to Lessee and Lessee leases from Lessor that certain real property, more particularly described in Exhibit A, attached hereto and incorporated herein (the "**Property**"). The Commencement Date of the Lease shall be the date this Memorandum is recorded in the Official Records of Alameda County, and the Lease shall remain in effect for the seventy-five (75) year term of the Lease, unless sooner terminated pursuant to the terms and conditions of the Lease.
3. As more particularly set forth in the Lease, certain development, affordability, and occupancy restrictions apply to the use of the Property.
4. This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.
5. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum. In the event of any

inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

6. This Memorandum may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts so executed shall together constitute but one and the same instrument.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

LESSOR:

City of Pleasanton, a California municipal corporation

By: _____
Nelson Fialho, City Manager

LESSEE:

[SIGNATURES MUST BE NOTARIZED]

Exhibit A to Memorandum

PROPERTY

The land referred to is situated in the County of Alameda, City of Pleasanton, State of California, and is described as follows:

EXHIBIT D
FINANCING PLAN

SECURED PROMISSORY NOTE
(Sunflower Hill)

\$2,250,000

Pleasanton, California
_____, 20__

FOR VALUE RECEIVED, _____ L.P., a California limited partnership (“**Borrower**”), promises to pay to the City of Pleasanton, a municipal corporation (the “**City**”), in lawful money of the United States of America the principal sum of Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000) or so much thereof as may be advanced by City pursuant to the Loan Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein. Interest shall accrue on the principal balance of this Note outstanding from time to time at the rate of three percent (3%) simple annual interest. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

This Secured Promissory Note (this “**Note**”) has been executed and delivered pursuant to and in accordance with a Disposition, Development and Loan Agreement (the “**Loan Agreement**”), dated as of _____, 2018, executed by and between City and Sunflower Irby LLC, a California limited liability company (“**Sunflower Irby**”), and is subject to the terms and conditions of the Loan Agreement, which is by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement. Pursuant to that certain Assignment and Assumption Agreement dated as of the date hereof, executed by and between Borrower and Sunflower Irby and acknowledged by City (“**Assignment and Assumption Agreement**”), Borrower assumed the rights and obligations of Sunflower Irby under the Loan Agreement.

This Note supersedes in its entirety that certain Predevelopment Promissory Note dated as of _____, 2018 and executed by Sunflower Irby for the benefit of City (the “**Prior Note**”). Pursuant to the Assignment and Assumption Agreement, Borrower assumed Sunflower Irby’s obligation to repay the outstanding balance of the Prior Note. The original principal amount of this Note is equal to the sum of: (a) Two Hundred Fifty Thousand Dollars (\$250,000) which is equal to the outstanding principal balance of the Prior Note as of the date of this Note, and (b) Two Million Dollars (\$2,000,000) which is equal to the amount of additional funds to be disbursed to Borrower pursuant to the Loan Agreement. As of the date of this Note, the Prior Note has been cancelled.

This Note is secured by a Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) dated as of the date hereof, executed by Borrower for the benefit of City and encumbering the property described therein. City shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, the Loan Agreement, and the other City Documents, including without limitation, that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of the date hereof, executed by and between City and Borrower and recorded in the Official Records of

Alameda County (the “**Regulatory Agreement**”). The rent restrictions and other requirements set forth in the Regulatory Agreement shall remain effective for the full term of the Regulatory Agreement and shall survive the repayment of this Note. The Loan Agreement, this Note, the Regulatory Agreement, the Deed of Trust, and the Ground Lease are collectively referred to herein as the “**City Documents**.”

1. PAYMENTS.

1.1 PAYMENT DATES; MATURITY DATE. Annual payments on this Note shall be payable on a residual receipts basis with fifty percent (50%) of all Surplus Cash (defined below) payable to City and the other Subordinate Lenders (defined below) on a pro rata basis as described below. Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of this Note, together with interest accrued thereon and all other sums accrued hereunder shall be payable in full on the date (the “**Maturity Date**”) which is the earlier of (i) the fifty-fifth (55th) anniversary of the date upon which the Project construction loan converts to permanent financing, or (ii) the fifty-seventh (57th) anniversary of the date hereof; provided however, the Maturity Date shall not be earlier than the date of expiration or termination of the Regulatory Agreement to be recorded by the California Tax Credit Allocation Committee (TCAC) against the Property in connection with an allocation of federal Low-Income Housing Tax Credits for the Project at about the time that the Project is placed in service.

1.2 ANNUAL PAYMENTS FROM SURPLUS CASH. By no later than June 1 of each year following the issuance of a final certificate of occupancy or equivalent for the Project, Borrower shall pay to City City’s Share (defined below) of fifty percent (50%) of Surplus Cash generated by the Project during the previous calendar year to reduce the indebtedness owed under this Note.

The respective annual shares of Surplus Cash that the City and the County of Alameda (“**County**”) shall be entitled to receive shall be based on the proportional share of financing that each such entity has provided for development of the Project. Based upon: (i) the City loan in the amount of Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000), and (ii) a County loan in amount of _____ Dollars (\$ _____), the City share will be _____ percent (___5%) (“**City’s Share**”) and the County share will be _____ percent (___%) (“**County’s Share**”). City and County are collectively referred to herein as the “**Subordinate Lenders**.” On an annual basis, each Subordinate Lender’s share of Surplus Cash shall be calculated by applying their respective percentage share of subordinate financing to 50% of Surplus Cash. If the City or County loan amounts differ from the amounts stated above, the respective shares of Surplus Cash payable to each Subordinate Lender shall be specified in an agreement among the Borrower and the Subordinate Lenders.

To summarize the foregoing, annual distributions of Surplus Cash shall be made in accordance with the following schedule:

A. 50% of Surplus Cash – to be retained by Borrower for use in accordance with the terms of Borrower’s limited partnership agreement.

B. 50% of Surplus Cash to be allocated as follows:

a. ____5% x 50% = ____% payable to the City, to be applied to reduce the outstanding balance payable under this Note;

b. ____% x 50% = ____% payable to the County to reduce the outstanding balance of the County loans.

No later than June 1 of each year following the issuance of a final certificate of occupancy or equivalent for the Project, Borrower shall provide to City Borrower’s calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request, including without limitation, an independent audit prepared for the Project by a certified public accountant in accordance with generally accepted accounting principles. City shall have the right to inspect and audit Borrower’s books and records concerning the calculation of Surplus Cash, and to object within ninety (90) days from receipt of Borrower’s statement. Failure to timely object shall be deemed acceptance. If City does object, City shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item. If Borrower and City cannot agree on the amount of Surplus Cash, an independent auditor mutually selected by Borrower and City shall resolve any disputed items. The cost of the auditor shall be shared equally by Borrower and City.

No later than November 1 of each year following issuance of the final certificate of occupancy or equivalent for the Project, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash. City will review the proposed budget and, if acceptable, approve it, which approval shall not be unreasonably withheld, provided, however, if the proposed budget has not been rejected by City within 30 days of receipt, City shall be deemed to have accepted the budget. If the budget is not acceptable, City shall specify the reasons for disapproval. Once approved, any changes to the budget that exceed ten percent (10%) of the total budget shall require City’s prior written consent, which consent shall not be unreasonably withheld.

1.2.1 “**Surplus Cash**” shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Project. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Project, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

1.2.2 “**Gross Revenue**” shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received from the operation and leasing of the Project. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 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; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of

casualty insurance not required to be paid to the holders of Approved Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Project shall be included within Annual Operating Expenses in the year of the expenditure); condemnation awards for a taking of part or all of the Property or the Improvements for a temporary period; and the fair market value of any goods or services provided to Borrower in consideration for the leasing or other use of any part of the Project. Gross Revenue shall include any release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Project. Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances, or interest earned on restricted reserve accounts.

1.2.3 “**Annual Operating Expenses**” shall mean for each calendar year during term hereof, the following costs reasonably and actually incurred for the 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: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on loans which have been approved in writing by the City and which are secured by deeds of trust senior in priority to the Deed of Trust (“**Approved Senior Loans**”); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects and paid pursuant to a property management agreement approved by City; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Project; expenses for security services; advertising and marketing costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements in an amount equal to \$450 per unit per year or such greater amount as reasonably required by the holder of an Approved Senior Loan or as required by a physical needs assessment prepared by a third-party selected or approved by City and prepared at Borrower’s expense; cash deposits into operating reserves in an amount reasonably approved by the City or required by the holder of an Approved Senior Loan, but only if the accumulated operating reserve does not exceed three (3) months’ projected Project operating expenses; any previously unpaid portion of the developer fee (without interest), provided that the aggregate amount of such fee does not exceed the maximum allowable for the Project pursuant to California Tax Credit Allocation Committee regulations; any required annual monitoring fees payable to the City or the County in connection with loans provided for the Project; any required annual fees payable in connection with tax-exempt financing issued for the Project, and other ordinary and reasonable operating expenses approved by City. Commencing on the Project placed in service date, Annual Operating Expenses shall also include payment of any current and accrued partnership management fee payable to the general partner of Borrower and accruing in the maximum annual amount of Twenty-Five Thousand Dollars (\$25,000), and an asset management fee payable to the investor limited partner of Borrower in the maximum annual amount of Seven Thousand Five Hundred Dollars (\$7,500), each increasing annually by three percent (3%); provided that the asset management fee shall only be included in the calculation of Annual Operating Expenses during the first fifteen (15) years following the date upon which the Project is placed in service.

1.2.4 EXCLUSIONS FROM ANNUAL OPERATING EXPENSES. Annual Operating Expenses shall exclude the following: developer fees and interest on any deferred developer fees (except as permitted pursuant to Section 1.2.3); contributions to Project operating or replacement reserves, except as provided in Section 1.2.3; debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; distributions to partners; any amount paid to Borrower, any general partner of Borrower, or any entity controlled by the persons or entities in control of Borrower or any general partner of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 1.2.3 above, even if paid to Borrower, an affiliate of Borrower, or a partner of Borrower: fees paid to a property management agent, resident services agent, or social services agent; partnership management fees, asset management fees, and subject to Section 1.2.5, repayment of cash advances by Borrower or its partners to cover Project operating expense deficits or emergency cash needs of the Project. Payments to Borrower, its partners or affiliates in excess of the limitations set forth in Section 1.2.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

1.2.5 ADJUSTMENT TO OPERATING EXPENSES. Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include: (a) the repayment of operating deficit loans provided by Borrower's limited partner(s) provided however, interest payable on such loans may be included in Annual Operating Expenses only in an amount equivalent to the lesser of (i) interest accrued at the actual interest rate charged for the loan, or (ii) interest accrued at a rate equal to the Applicable Federal Rate, and (b) the amount of any tax credit adjustor that is required to be paid from Project cash flow.

1.3 EXCESS PROCEEDS. Within ten (10) business days after Borrower's receipt of its limited partner(s)' capital contribution following the issuance of the IRS Form 8609 for the Project, Borrower shall pay to the City as a reduction of the outstanding principal balance of this Note, a one-time payment in the amount of City's Share of Excess Proceeds. "Excess Proceeds" shall mean the sum of all sources of financing received by Borrower for acquisition, construction and permanent financing of the Property and the Project, less the sum of actual uses as shown on the final cost certificate for the Project. The City and the County shall each be entitled to receive a share of Excess Proceeds, in an amount equal to the proportional share of financing that each such entity has provided for development of the Project, as more specifically set forth in Section 1.2 above. Prior to calculating Excess Proceeds, the Project operating reserve shall be funded in the amount of three (3) months' projected Project operating expenses.

1.4 DUE ON SALE. The entire unpaid principal balance and all interest and other sums accrued hereunder shall be due and payable upon the Transfer (as defined in Section 8.1 of the Regulatory Agreement) absent City consent, of all or any part of the Project or the Property or any interest therein other than a Transfer permitted without City consent pursuant to the Regulatory Agreement or the Ground Lease. Without limiting the generality of the foregoing, this Note shall not be assumable without City's prior written consent, which consent may be granted or denied in City's sole discretion.

1.5 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal. The Regulatory Agreement shall remain in full force for the entire term thereof regardless of any prepayment of this Note.

1.6 MANNER OF PAYMENT. All payments of principal and interest on this Note shall be made to City at 123 Main Street, Pleasanton, CA 94566 or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

2. DEFAULTS AND REMEDIES.

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder (“**Event of Default**”):

(A) Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after City notifies Borrower thereof in writing.

(B) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (“**Bankruptcy Law**”), Borrower or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower, or any general partner thereof, in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(C) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower, or any general partner thereof, or substantially all of such entity’s assets, (iii) orders the liquidation of Borrower or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within ninety (90) days after its issuance.

(D) The occurrence of a Transfer in violation of the Loan Agreement or the Regulatory Agreement.

(E) The holder of any debt instrument secured by a mortgage or deed of trust on the Project or the Property declares a default, and such default remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

(F) Borrower fails to maintain insurance on the Property and the Project as required pursuant to the City Documents and Borrower fails to cure such default within five (5) days.

(G) Subject to Borrower's right to contest the following charges pursuant to the City Documents, if Borrower fails to pay taxes or assessments due on the Property or the Project or fails to pay any other charge that may result in a lien on the Property or the Project, and Borrower fails to cure such default within twenty (20) days, but in all events before the imposition of any such tax or other lien.

(H) If any representation or warranty contained in any City Document, or any certificate furnished in connection therewith, or in connection with any request for disbursement of the proceeds of the Loan proves to have been false or misleading in any material adverse respect when made and continues to be materially adverse to the City.

(I) An Event of Default shall have been declared under the Loan Agreement or any other City Document, including without limitation, the Regulatory Agreement, and remains uncured beyond the expiration of the applicable cure period.

2.2 REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to City under this Note and the other City Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust. The rights and remedies of City under this Note shall be cumulative and not alternative.

2.3 DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the "**Default Rate**"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

2.4 LIMITED PARTNERS RIGHT TO CURE. Borrower's limited partners shall have the right to cure any default of Borrower hereunder pursuant to Section 10.9 of the Loan Agreement.

3. MISCELLANEOUS.

3.1 WAIVERS; AMENDMENTS; BORROWER'S WAIVERS. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by City will be applicable except in the specific instance for which it is given. No notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of City to take further action without notice or demand as provided in this Note. There shall be no amendment to or modification of this Note except by written instrument executed by Borrower and City.

To the maximum extent permitted by applicable law Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

3.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 11.3 of the Loan Agreement.

3.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Any legal action filed in connection with this Note shall be filed in the Superior Court of Alameda County, California, or in the Federal District Court for the Northern District of California.

3.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of City and its successors and assigns.

3.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and City under this Note is solely that of borrower and lender, and the loan evidenced by this Note and secured by the Deed of Trust will in no manner make City the partner or joint venturer of Borrower.

3.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

3.9 NONRECOURSE. Except as expressly provided in this Section 3.9, neither Borrower nor the general or limited partners of Borrower shall have personal liability for

payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Project, the Property and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall:

(A) impair the enforcement against all such security for the Loan of all the rights and remedies of the City under the Deed of Trust and any financing statements City files in connection with the Loan as each of the foregoing may be amended, modified, or restated from time to time;

(B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Project and the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action;

(C) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto;

(D) constitute a waiver of any right which City may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Project and the Property shall continue to secure all of the indebtedness owed to City hereunder in accordance with this Note and the Deed of Trust; or

(E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to enforce against Borrower and its general partners to:

(1) recover under any provision of the City Documents that obligates Borrower to indemnify City, or

(2) recover from Borrower and its general partners compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following:

(a) any fraud or intentional misrepresentation on the part of the Borrower, or its general partners, or any officer, director or authorized representative of Borrower or its general partners in connection with the request for or creation of the Loan, or in any City Document, or in connection with any request for any action or consent by City in connection with the Loan;

(b) any failure to maintain insurance on the Property and the Project as required pursuant to the City Documents;

(c) failure to pay taxes, assessments or other charges which may become liens on the Property or the Project (subject to the right to contest as set forth in the Loan Agreement);

(d) the presence of Hazardous Materials on the Property or other violation of the Borrower's obligations under Article VII of the Loan Agreement or Section 7.11 of the Deed of Trust (pertaining to environmental matters), except as limited by the provisions of such agreements;

(e) the occurrence of any act or omission of Borrower that results in waste to or of the Project or the Property and which has a material adverse effect on the value of the Project or the Property;

(f) the material misapplication of the Loan proceeds;

(g) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust;

(h) the material misapplication of the proceeds of any insurance policy or award 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 Project or the Property; and

(i) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the Loan Agreement or the Regulatory Agreement.

SIGNATURE ON FOLLOWING PAGE

IN WITNESS WHEREOF, Borrower has executed this Secured Promissory Note as of the date first written above.

BORROWER:

_____, L.P., a California limited partnership

By: _____

Its: General Partner

By: _____

Its: _____