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DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT

BETWEEN

THE CITY OF UNION CITY

AND

MIDPEN HOUSING CORPORATION

(Lazuli Landing)

Dated as of July 28, 2020

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DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT

(Lazuli Landing)

This Disposition, Development, and Loan Agreement (the "Agreement") is entered into as of July 28, 2020 (the "Effective Date"), by and between the City of Union City, a California municipal corporation (the "**City**"), and MidPen Housing Corporation, a California nonprofit public benefit corporation (the "**Developer**"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. As of the Effective Date, the City is the owner of certain undeveloped real property bounded by Mission Boulevard, D Street, E Street and 2nd Street in the City of Union City (the "**Property**").

C. Prior to the Effective Date, the City and the Developer entered into an Exclusive Negotiating Rights Agreement ("**ENRA**") which provided for the parties to negotiate towards a disposition and development agreement for the City's disposition of the Property to Developer, the Developer's construction and operation of an affordable housing development thereof with associated community facilities, and the City's provision of financial assistance to the Developer therefor.

D. The City and the Developer desire for the Developer to develop an eighty-one (81) unit multifamily rental housing development on the Property with long-term affordability requirements including one (1) manager's unit that is not subject to affordability requirements. To effectuate this purpose, the City will lease the Property to the Developer, subject to the terms and conditions of this Agreement and in accordance with the terms of the Ground Lease. In addition, the City will provide the City Loan pursuant to the terms and conditions set forth in this Agreement.

E. Developer has represented to the City, and the City has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement. The City has further determined that this Agreement is in the best interests and will materially contribute to the improvement of the City by improving the supply of affordable housing therein.

F. Pursuant to Government Code Section 65915, et seq. (the "**State Density Bonus Law**"), owners of residential projects that include specified levels of affordable housing are entitled to apply for and receive density bonuses and additional incentives and concessions in order to facilitate the economic feasibility of those projects. Developer has applied to the City for a density bonus and incentives and concessions pursuant to the State Density Bonus Law, based on providing a portion of the units on the Property to be affordable to very low income households. This Agreement and the City Regulatory Agreement to be entered pursuant to this Agreement are intended to implement the requirement for the Development to provide affordable

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housing units in exchange for receiving the density bonus and incentives and concessions pursuant to the State Density Bonus Law as set forth herein.

THEREFORE, the City and the Developer agree as follows:

ARTICLE 1. DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Agreement" means this Disposition, Development, and Loan Agreement, including the attached Exhibits and all subsequent amendments to this Agreement and implementation agreements.

(b) "CDLAC" means the California Debt Limit Allocation Committee.

(c) "City" means the City of Union City, a California municipal corporation.

(d) "City Deed of Trust" means the deed of trust that will encumber the Developer's interest in the Property to secure repayment of the City Promissory Note, and will be recorded against the Developer's interest in the Property at the Closing, substantially in the form attached hereto as Exhibit G and incorporated herein.

(e) "City Documents" means, collectively, this Agreement, the Ground Lease, the City Promissory Note, the City Deed of Trust, the City Regulatory Agreement, the Notice of Affordability Restrictions, the Community Space Sublease, and all other documents required to be executed by the Developer in connection with the transaction contemplated by this Agreement.

(f) "City Event of Default" has the meaning set forth in Section 7.2

(g) "City Grant" means the grant from the City to the Developer or an entity designated by the Developer in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000) to be loaned by the grantee to the Developer and to be used for the costs of construction and installation of the Community Space and tenant improvements for the Community Space.

(h) "City Loan" means the loan from the City to the Partnership in the amount of Five Million Thirty-Four Thousand Nine Hundred Twenty-Four Dollars (\$5,034,924) evidenced by the City Promissory Note.

(i) "City Manager" means the City Manager of the City.

(j) "City Promissory Note" means the promissory note that will evidence the Developer's obligation to repay the City Loan in a form to be provided by the City consistent with the terms of this Agreement, substantially in the form attached hereto as Exhibit F and incorporated herein.

(k) "City Prorata Percentage" has the meaning set forth in Section 4.6(b).

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(l) "City Regulatory Agreement" means the regulatory agreement and declaration of restrictive covenants to be executed by the Parties, and recorded against the Property at the Closing, substantially in the form attached hereto as Exhibit H and incorporated herein.

(m) "Closing" means the commencement date of the lease of the Property from City to Developer through the Ground Lease.

(n) "Community Space" means the approximately 6,000 square feet of ground floor office space more particularly described in the Scope of Development attached as Exhibit C. For avoidance of doubt, the Community Space is separate and distinct from the resident community room, after-school program room or any other space designated a Resident amenity in the Scope of Development attached as Exhibit C.

(o) "Community Space Sublease" means the Developer's sublease of the Community Space to City substantially in the form attached hereto as Exhibit J and incorporated herein.

(p) "Council Members" means the members of the City Council of the City.

(q) "County" means the County of Alameda, California.

(r) "Developer" means MidPen Housing Corporation, a California nonprofit public benefit corporation and its permitted successors and assigns as set forth herein.

(s) "Developer Event of Default" has the meaning set forth in Section 7.3.

(t) "Development" means the Property and the Improvements.

(u) "Due Diligence Period" has the meaning set forth in Section 2.5.

(v) "ENRA" means that certain Exclusive Negotiating Rights Agreement dated as of August 15, 2018, by and between the City and the Developer.

(w) "Escrow" means the escrow established with the Title Company for the purpose of conveying the Property from the City to the Developer.

(x) "Final Development Cost" means the total of the cost of acquisition and construction of the Development as shown on the TCAC Sources and Uses Certification of Costs and Eligible Basis Form.

(y) "Final Financing Plan" means the Developer's updated and revised Financing Plan for financing the acquisition of the Property and the construction of the Development approved by the City pursuant to Section 2.3 hereof.

(z) "Ground Lease" means the ground lease by which the City shall lease the Property to the Developer, substantially in the form attached hereto as Exhibit D and incorporated herein.

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(aa) "Hazardous Materials" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances" under applicable Hazardous Materials Laws, including without limitation petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of constructing, developing, operating, or occupying a residential and office mixed-use project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

(bb) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials.

(cc) "Improvements" means: (i) eighty-one (81) units of affordable housing for income-eligible households, including one (1) manager's unit, to be constructed in accordance with this Agreement, (ii) the Community Space, and (iii) related onsite improvements, parking, landscaping and other improvements located or to be located on the Property, all as more particularly set forth in the Scope of Development attached as Exhibit C.

(dd) "Investor" has the meaning set forth in Section 6.9(d).

(ee) "Net Proceeds of Permanent Financing" means the amount by which permanent financing for the Development exceeds Final Development Costs.

(ff) "Notice of Affordability Restrictions" means the Notice of Affordability Restrictions Upon Transfer of Property to be recorded against the Property at Closing, substantially in the form attached hereto as Exhibit I and incorporated herein.

(gg) "Parties" means the City and the Developer. "Party" means either the City or the Developer.

(hh) "Partnership" means MP Lazuli Landing Associates, L.P., the California limited partnership which Developer has formed to own, construct, and operate the Development, in which an affiliate of Developer will be the sole general partner, to be joined by the Investor as limited partner(s) upon syndication of the low income housing tax credits for the Development.

(ii) "Partnership Agreement" means the limited partnership agreement of the Partnership.

(jj) "Permitted Community Uses" means the use of the Community Space for (i) the City Youth and Family Services program and/or other City departments and programs, (ii) the offices of Centro de Servicios and/or other nonprofit and community organizations as determined by City, provided such nonprofits or community organizations qualify for a property tax exemption, and (iii) other uses as determined by City. Any use of the Community Space other than for uses which are described in (i) or (ii) above shall be subject to the approval of Developer, Developer's Investor and lenders, which shall not be unreasonably withheld or

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delayed. Uses of the Community Space described in (i) or (ii) above shall not require the approval of Developer or its Investor and lenders.

(kk) "Preliminary Financing Plan" means the Developer's Financing Plan for financing the acquisition of the Property and the construction of the Development in the form attached hereto as Exhibit E and incorporated herein.

(ll) "Property" means the real property to be leased by the City to the Developer and developed by the Developer pursuant to this Agreement and the terms of the Ground Lease, which real property is more particularly described in the Legal Description attached hereto as Exhibit A which is incorporated herein.

(mm) "Residual Receipts" means the excess of annual Operating Revenues over annual Operating Expenses for the Development. "Operating Revenues" means all income derived from the Development, and includes, without limitation: (i) rents; (ii) rent subsidy payments received on behalf of tenants; and (iii) receipts from laundry, parking, vending, or other services in which a fee is charged. "Operating Expenses" means all direct costs and expenses necessary to operate the Development including: (1) debt service on any loans secured by the Property as described in the Closing Financing Plan or otherwise approved by City, provided that such loans have been used to develop or improve the Development (or to refinance loans used for development or improvement of the Development); (2) resident service program and property management fees and costs; (3) property taxes and assessments (if any); (4) insurance premiums; (5) maintenance and repair; (6) reasonable payments to reserves for operating contingencies, replacement of capital items, and other reserve uses in such amounts as are required by the loans described in paragraph (1); (7) deferred developer fee to the Developer or its affiliate for development services for the Development in such amount as set forth in the Closing Financing Plan as such amount may be updated by the final cost certification upon completion of construction; (8) credit adjuster payments, limited partner loans, and developer loans all as set forth in the Partnership Agreement; and (9) payments for partnership management fee, asset management fees, and other fees payable to a partner of the Partnership pursuant to the Partnership Agreement in such amounts as are set forth in the Closing Financing Plan including any annual inflationary increases included in the Closing Financing Plan.

(nn) "Schedule of Performance" means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve disposition of the Property to the Developer and the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit B.

(oo) "Security Financing Interest" has the meaning set forth in Section 8.1.

(pp) "State Density Bonus Law" means Government Code Section 65915, et seq.

(qq) "TCAC" means the California Tax Credit Allocation Committee.

(rr) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until expiration or termination of the Ground Lease, except for such provisions hereof which survive the expiration or termination of the Ground Lease

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(ss) "Title Company" means Old Republic Company, 555 12th Street, Suite 2000, Oakland CA 94607.

(tt) "Title Report" means the preliminary title report for the Property dated as of May 30, 2018, prepared by the Title Company, as it may be updated from time to time.

(uu) "Transfer" has the meaning set forth in Section 6.9.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated in the Agreement:

Exhibit A:	Legal Description of the Property
Exhibit B:	Schedule of Performance
Exhibit C:	Scope of Development
Exhibit D:	Ground Lease
Exhibit E:	Preliminary Financing Plan
Exhibit F:	City Loan Promissory Note
Exhibit G:	City Loan Deed of Trust
Exhibit H:	City Regulatory Agreement
Exhibit I:	Notice of Affordability Restrictions
Exhibit J:	Community Space Sublease

ARTICLE 2.
PREDISPOSITION ACTIVITIES

Section 2.1 Schedule of Performance. Certain tasks described in this Agreement must be completed no later than the dates set forth in the Schedule of Performance attached to this Agreement as Exhibit B, subject to events of forced delay as set forth in Section 9.3. The Schedule of Performance may be modified as described in Section 9.15 by the Developer and by the City Manager on behalf of the City without formal amendment of this Agreement.

Section 2.2 Developer Deposit. In connection with the execution of the ENRA, the Developer has deposited Fifty Thousand Dollars (\$50,000) with the City (the "**Deposit**") which deposit was subject to being increased to a maximum of One Hundred Thousand Dollars (\$100,000). As of the date of this Agreement, the remaining unexpended balance of the Deposit is . Within five (5) business days of the Effective Date of this Agreement, the City shall return the remaining unexpended balance of the Deposit to the Developer.

Section 2.3 Financing Plan. The Developer's preliminary plan for the financing of the Development ("**Preliminary Financing Plan**") is attached hereto as Exhibit E and incorporated herein. The Preliminary Financing Plan includes a description of the City Loan (and method of disbursement of City Loan funds), the City Grant (and method of disbursement of City Grant funds), financing from the California Department of Housing and Community Development Infill Infrastructure Grant Program ("**IIG**") and California Strategic Growth Council Affordable Housing and Sustainable Communities Program ("**AHSC**"), City's allocation of County of Alameda Measure A-1 funds in the amount of Eight Million Seven Hundred Eighty Seven Thousand One Hundred Twenty One Dollars (\$8,787,121), County of Alameda Regional

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Measure A-1 competitive funds in the amount of Four Million Four Hundred Fifty Three Thousand Eight Hundred Ninety Nine Dollars (\$4,453,899), private activity bonds, private construction and permanent loans, 4% Low Income Housing Tax Credits and receipt of equity investor funds, and potential Developer deferral of a portion of its development fee. The Parties acknowledge that certain proposed forms of funding in the Preliminary Financing Plan are available through competitive funding programs including the IIG and AHSC funds, and that the Development may not be successful in actually obtaining one or more of such forms of financing. The Developer shall submit timely and complete applications for each of the forms of financing which are included in the Preliminary Financing Plan, and in the event any of Developer's applications therefor are disapproved, Developer shall continue to submit such applications in each subsequent application round until successful. The Parties anticipate that the types and amounts of financing for the Development will change and be refined during the period between the Effective Date and the Closing or potentially after the Closing, if the Closing occurs prior to the satisfaction of all of the conditions set forth in Section 3.3 and 3.4 to satisfy requirements of the Surplus Lands Act (Government Code § 54220 et seq.). Accordingly, no later than the date set forth in the Schedule of Performance, the Developer shall submit an updated and revised financing plan (the "**Final Financing Plan**") which shall include a development budget, updated amounts for each of the foregoing funding sources and any other funding sources obtained, and copies of written commitments for each funding source. The City shall approve or disapprove the Final Financing Plan in writing within thirty (30) days after the City's receipt, which approval shall not be unreasonably withheld, conditioned or denied. Failure by the City to either approve or disapprove a submission made by the Developer within the time set forth above shall be deemed disapproval. If the Final Financing Plan is disapproved or deemed disapproved by the City, the Developer shall have thirty (30) days from the date of the Developer's receipt of the City's notice of disapproval to submit a revised Final Financing Plan. In the event the City disapproves the second submission, the City and the Developer agree to negotiate in good faith to develop a submission that is reasonably acceptable to both the City and the Developer within a reasonable period of time. Immediately prior to the closing on the construction sources of financing, the Developer shall provide the City with an update to the Final Financing Plan ("**Closing Financing Plan**") that will include the final amounts of all funding sources and uses and will replace the Final Financing Plan. As long as the Closing Financing Plan contains all of the sources identified in the Final Financing Plan, the Closing Financing Plan shall be deemed approved by the City. All financing necessary for the construction of the Development, as approved by the City in the Final Financing Plan (not including permanent financing) and updated in the Closing Financing Plan, shall be closed by the Developer prior to, or simultaneously with, the conveyance of the Property by the City to the Developer unless the Closing occurs at an earlier date in order to satisfy the requirements of the Surplus Lands Act.

Section 2.4 Tax Credit and Bond Applications. The Developer shall submit a timely and complete application to TCAC for a preliminary reservation of 4% Low Income Housing Tax Credits and an application to CDLAC for an allocation for tax exempt bonds within the time set forth in the Schedule of Performance. In the event Developer's application or applications are disapproved, Developer shall continue to submit such applications in each subsequent round until successful.

Section 2.5 Developer Due Diligence. Prior to the conveyance of the Property from the City to the Developer, representatives of the Developer shall have the right of access to the

Property at all reasonable times to inspect and conduct such studies of the Property as the Developer, in its sole discretion, may desire, and to perform predevelopment construction work approved by the City. Such purposes shall include conducting soils tests, engineering studies, seismic and geologic studies, inspections and testing for Hazardous Materials, and underground storage tanks, investigation of applicable zoning and other land use regulations, analysis of economic feasibility and other studies related to the Developer's use of the Property and the condition of the Property. The Developer shall provide the City at least forty-eight (48) hours' notice prior to accessing the Property. City shall have the right, but not the obligation, to accompany Developer during such investigations. On or before the date that is one hundred eighty (180) days following the Effective Date (the "**Due Diligence Period**"), the Developer shall give written notice to the City as to whether the Developer approves or disapproves of the Property. Developer shall (i) conduct all work or studies in a diligent, expeditious, and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after the investigation; (ii) obtain any required governmental permits and comply with all applicable laws and governmental regulations; (iii) keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this paragraph; (iv) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) for all persons entering the Property in the amounts required by the State of California; and (v) provide to City prior to initial entry a certificate of insurance evidencing that Developer and/or the persons entering the Property have procured and have in effect commercial general liability insurance that satisfies the requirements set forth in Section 6.8 hereof. Developer shall, in a timely manner, repair any and all damage to the Property caused by such inspections or investigations. The Developer shall indemnify, defend and hold the City and its officers, employees, agents, consultants, and contractors harmless for any injury or damages arising out of any activity pursuant to this Section, provided however the Developer shall not be responsible for any injury or damage that may occur solely from discovery of existing conditions on the Property provided the Developer does not exacerbate such existing conditions. The Developer shall have access to all data and information on the Property available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

Section 2.6 Updated Preliminary Title Report. Within twenty (20) days of execution of this Agreement the City shall direct the Title Company to provide the Developer an update to the Title Report and copies of all title exceptions to the Property shown on the updated Title Report.

Section 2.7 Construction Plans. The Developer shall submit its Construction Plans to the City building department for approval within the time set forth in the Schedule of Performance. "**Construction Plans**" means all construction documentation upon which the Developer and the Developer's general contractor shall rely on for constructing the Improvements identified in the Scope of Development, which includes final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings"). The execution of this Agreement does not constitute the approval of the Construction Plans or the granting of or a commitment to obtain, approve, or grant any required land use permits, entitlements, or approvals required by City, and City shall apply the same standards and retain the same discretion over such matters as it has with respect to any other applications for Construction Drawings and land use and other entitlements, permits, and approvals submitted to the City. This Agreement does not require that

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City comply with the implied covenant of good faith and fair dealing in reviewing and approving or disapproving the Construction Plans or land use and other entitlements, permits, and approvals with respect to the Improvements. In no event shall City's disapproval or failure to approve the Construction Drawings or any land use and/or other entitlements, permits, and approvals with respect to the Improvements, be deemed a breach or Default of this Agreement.

ARTICLE 3.
CONVEYANCE OF THE PROPERTY

Section 3.1 Lease of Property. Subject to the terms and conditions of this Agreement, the City shall lease the Property to the Developer, and the Developer and the City shall enter into the Ground Lease at the time set for the Closing unless this Agreement is sooner terminated.

Section 3.2 Opening Escrow. To accomplish the transfer of the leasehold interest in the Property, the Parties shall establish an escrow with the Title Company and shall execute and deliver to the Title Company written instructions that are consistent with this Agreement.

Section 3.3 City's Conditions to Closing. The Closing shall occur no later than the date set forth in the Schedule of Performance, as such date may be extended by mutual approval of the Parties. The City's obligation to proceed with the conveyance of the leasehold interest in the Property is subject to the fulfillment (or waiver in writing by the City) of each and all of the conditions precedent set forth in this Section, which are solely for the benefit of the City, and which may be waived by the City in its sole discretion. If there is no waiver or satisfaction by the date set for the Closing, the City may terminate this Agreement upon written notice to the Developer without further liability, and except for continuing obligations provided elsewhere in this Agreement. Notwithstanding the above, the City agrees that if necessary to satisfy requirements of the Surplus Lands Act, it shall waive any of the below conditions as conditions of Closing as long as such conditions are incorporated into the Ground Lease as conditions to transfer of possession of the Property to the Developer:

(a) Closing Documents. The Developer shall have executed and delivered to the City the Ground Lease, the City Promissory Note, the City Deed of Trust, the City Regulatory Agreement, the Notice of Affordability Restrictions, and the Community Space Sublease.

(b) Organizational Documents. The City shall have received and approved a copy of such portions of the organizational documents of Developer or Developer's successor-in-interest as the City deems reasonably necessary to document the power and authority of Developer to perform its obligations set forth in this Agreement. Developer shall have made full disclosure to City of the names and addresses of all persons and entities that have a beneficial interest in Developer.

(c) Insurance. Developer shall have submitted to City and City shall have approved Developer's evidence of the liability insurance required pursuant to Section 6.8 hereof.

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(d) Land Use Entitlements. The City shall have approved the land use entitlements for the Development and Developer shall have approved or be deemed to have approved the same, including without limitation all terms and conditions applicable thereto.

(e) Evidence of Development Financing. The City shall have received and reasonably approved the following (to the extent such financing is contained in the approved Final Financing Plan):

(i) Construction Loan Documents. True and complete copies of the construction loan documents evidencing the obligation of the lender to make the construction loan to Developer, in an amount consistent with the approved Final Financing Plan as updated by the Closing Financing Plan, subject only to reasonable and customary conditions.

(ii) Tax Credit Financing. Evidence reasonably acceptable to the City that Developer has committed, or caused to be committed, funds from the syndication of the Tax Credits (the "**Tax Credit Funds**") to construction of the Development, subject only to reasonable and customary conditions.

(iii) Permanent Loan Commitment. A commitment from a lender reasonably acceptable to City (who may also be the construction lender) to make a permanent loan to Developer, with a term of not less than fifteen (15) years, in sum sufficient, when added to any Tax Credit Funds to be disbursed for such purpose, to take out any existing construction financing, subject only to reasonable and customary conditions, and consistent with the approved Final Financing Plan as updated by the Closing Financing Plan.

(iv) IIG and AHSC Loans. A commitment from the California Department of Housing and Community Development to make the IIG loan, and a commitment from the California Strategic Growth Council to make the AHSC loan, to Developer in amounts consistent with the approved Final Financing Plan as updated by the Closing Financing Plan, subject only to reasonable and customary conditions.

(v) Other Funding Sources. Commitments and documents from other funding sources described in the Final Financing Plan as updated by the Closing Financing Plan.

(f) General Contractor. The general contractor for the Development (the "**General Contractor**") shall have been approved by the City, which approval shall not be unreasonably withheld or delayed.

(g) Construction Contract. City shall have received a true and complete copy of a contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Development at a cost consistent with the costs set forth therefor in the Development budget set forth in the approved Final Financing Plan as updated by the Closing Financing Plan (the "**Construction Contract**").

(h) Grading and Building Permit. The Grading Permit and Building Permit for the Development shall have issued or shall be ready to issue subject only to the payment of applicable fees, the posting of required security, or both.

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(i) Construction to Commence. The City shall be reasonably satisfied that construction of the Development will commence within the time set forth in the Schedule of Performance and thereafter will be pursued to completion in a diligent and continuous manner.

(j) Management Plan. Developer shall have submitted a comprehensive management plan for the Development to the City in accordance with the City Regulatory Agreement and the City shall have approved the same.

(k) Management Agreement. The City shall have received and reasonably approved an executed agreement by and between Developer and MidPen Property Management Corporation (the “**Management Agreement**”), which Management Agreement shall be consistent with this Agreement and the requirements of the City Regulatory Agreement.

(l) Request for Notice of Default. City shall have submitted into the escrow a request for notice of default pursuant to Civil Code Section 2924(b), requesting that any beneficiaries of liens securing the Development financing notify City of any default under the instrument creating the lien (the “**Request for Notice**”).

(m) Documents Executed. Developer shall have duly executed the Ground Lease, Memorandum of Ground Lease, the City Note, the City Deed of Trust, City Regulatory Agreement, Notice of Affordability, and the Community Space Sublease, with signatures acknowledged (as applicable) and deposited them into Escrow.

(n) Title Policy. Title Company is prepared to issue its LP-10 loan policy of title insurance naming City as the insured, in a policy amount not less than the principal amount of City Loan, showing Developer as holding leasehold title to the Property and insuring the City Deed of Trust to be a valid lien on the Property subject only to exceptions approved by City (the “**City Title Policy**”).

(o) Total Development Cost. Nothing shall have come to the attention of Developer and/or City to indicate that the Development cannot be completed at a cost consistent with the Development budget set forth in the approved Final Financing Plan as updated by the Closing Financing Plan, and, if there has been such an indication, Developer has provided evidence, reasonably satisfactory to City, of the availability of funding sources other than City to complete the Development. If Developer becomes aware of any such information, Developer shall promptly give notice thereof to City.

(p) No Defaults. There shall exist no condition, event or act which would constitute a breach or default of Developer under this Agreement.

(q) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the date of the disbursement as though made on and as of that date and, if requested by the City, City shall have received a certificate to that effect signed by Developer.

Section 3.4 Developer's Conditions to Closing. The Developer's obligation to proceed with the acquisition of the Property is subject to the fulfillment (or waiver in writing by the Developer) of each and all of the conditions precedent set forth in this Section, which are solely for the benefit of the Developer, and which may be waived by Developer in its sole discretion. If

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there is no waiver or satisfaction by the date set for the Closing, the Developer may terminate this Agreement upon written notice to the City without further liability, and except for continuing obligations provided elsewhere in this Agreement. Notwithstanding the above, the Developer agrees that if necessary to satisfy the requirements of the Surplus Lands Act, it shall waive any of the below conditions as conditions of Closing as long as such conditions are incorporated into the Ground Lease as conditions to transfer of possession of the Property to the Developer:

(a) The City shall have executed and delivered to the Title Company the Ground Lease, the Memorandum of Lease and other City Documents to be executed by the City.

(b) There shall have been no adverse change in the condition of the Property, or discovery of a physical condition that would adversely interfere with the development of the Development since the conclusion of the Due Diligence Period.

(c) There shall exist no condition, event or act which would constitute a breach or default of the City under this Agreement.

(d) The Developer shall be satisfied with the updated Title Report provided by the City and the Title Company is unconditionally and irrevocably committed to provide the Developer insurable leasehold interest to the Property free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

(1) the Ground Lease, the City Regulatory Agreement, and the City Deed of Trust;

(2) the liens of any loan described in the Final Financing Plan; and

(3) conditions, covenants, restrictions or easements currently of record and approved by the Developer in its reasonable discretion.

(e) Total Development Cost. Nothing shall have come to the attention of Developer and/or City to indicate that the Development cannot be completed at a cost consistent with the Development budget set forth in the approved Final Financing Plan as updated by the Closing Financing Plan.

(f) Land Use Entitlements. The City shall have approved the land use entitlements for the Development and Developer shall have approved the same, including without limitation all terms and conditions applicable thereto.

(g) Representations and Warranties. The representations of City contained in this Agreement shall be correct in all material respects as of the date of the Closing as though made on and as of that date and, if requested by the Developer, Developer shall have received a certificate to that effect signed by City.

Section 3.5 Condition of Property.

(a) In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), the City hereby represents and warrants that it has no knowledge, and has no

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reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the City to Developer.

(b) Prior to the Closing, the City shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Property. If any Hazardous Materials are identified on the Property that were caused by or permitted to occur by the City on the Property or which the City had knowledge of but failed to disclose to the Developer, the City and Developer agree to meet in good faith to discuss the City's obligation for costs regarding any necessary remediation. In the event that the parties do not agree on the City's obligation to cause the condition to be remediated or mitigated as part of development or the remediation costs cause financial feasibility issues for the Development, either party in its sole discretion may terminate this Agreement upon written notice to the other without further liability, except for continuing obligations provided elsewhere in this Agreement.

(c) Developer acknowledges and agrees Developer or the Partnership is leasing the Property from City solely in reliance on its own investigation, and that no representations and/or warranties of any kind whatsoever, express or implied, have been made by City or by any of its, officers, employees, representatives or agents, except as expressly made in this Agreement. Developer further acknowledges and agrees that Developer or the Partnership will be leasing the Property in an "AS IS" condition with all faults and conditions then existing in and on the Property, whether known or unknown, except as otherwise expressly stated in this Agreement.

Section 3.6 Closing. Upon the Closing the Title Company shall record the Memorandum of Ground Lease, City Deed of Trust, City Regulatory Agreement and Notice of Affordability Restrictions against the Property, and shall provide the City the title policy described in Section 3.4(n) and provide the Developer the title policy described in Section 3.5(d).

Section 3.7 Costs of Escrow and Closing. Ad valorem taxes and assessments, if any, on the Property, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the City. The Developer shall pay the cost of all title insurance policies, transfer tax, Title Company document preparation, recordation fees and escrow fees of the Title Company, if any, to close escrow.

ARTICLE 4.
CITY LOAN PROVISIONS

Section 4.1 City Loan. The City Loan shall be governed by the terms and provisions of this Agreement, the City Promissory Note, and the City Deed of Trust.

Section 4.2 City Financing.

The City agrees to provide the Partnership a loan in the amount of Five Million Thirty-Four Thousand Nine Hundred Twenty-Four Dollars (\$5,034,924) for the Development (the "**City Loan**"), on the conditions set forth below.

Section 4.3 Interest. Simple interest will accrue on the outstanding principal balance of the City Loan at a per annum rate of interest equal to zero percent (0%), commencing on the Closing.

Section 4.4 Predevelopment Component Disbursement Requirements.

The maximum amount of funds to be disbursed pursuant to this Section shall not exceed the maximum principal amount of Two Million Three Hundred Forty-Five Thousand Dollars (\$2,345,000) of the City Loan amount set forth in the Preliminary Financing Plan (“**Predevelopment Loan Component**”) for predevelopment costs, including but not limited to architecture and design costs, legal and consultant fees, offsite and/or onsite improvements to meet the Property’s fire flow code requirements, and other preconstruction related costs. The City shall not be obligated to make any disbursements of City Loan funds for the Predevelopment Loan Component unless the following conditions precedent are satisfied prior to each such disbursement of Loan funds:

- (a) The Developer has delivered to the City the fully executed City Promissory Note.
- (b) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.
- (c) The Developer has furnished the City with evidence of insurance coverage meeting the requirements of Section 6.8 below;
- (d) The City has received a written draw request from the Developer, including certification that the condition set forth in Section 4.4(b) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Preliminary Financing Plan, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred;
- (e) The Developer has obtained all permits and approvals necessary for the construction of any Improvements which are proposed to be funded through the Predevelopment Loan Component of the City Loan, and the building permit for such Improvements has been issued or is ready to be issued subject only to the payment of applicable fees, the posting of required security or both;
- (f) No more than Five Hundred Thousand Dollars (\$500,000) of the Predevelopment Loan Component shall be disbursed to the Developer before the Developer has sent notice to the City approving the condition of the Property pursuant to Section 2.5 hereof]

Section 4.5 Conditions Precedent to Disbursement of Construction Loan Component.

The City shall not be obligated to disburse the Construction Loan Component consisting of the City Loan minus the Predevelopment Loan Component unless the following conditions precedent are satisfied:

- (a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement or the Ground Lease;
- (b) The Closing has occurred or will occur concurrently with the disbursement of the Construction Loan Component;

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(c) The Developer has furnished the City with evidence of insurance coverage meeting the requirements of Section 6.8 below;

(d) Developer has caused to be executed and delivered to the City all City Documents and any other instruments and policies required under the Loan Documents;

(e) The Deed of Trust, City Regulatory Agreement, and Notice of Affordability Restrictions have been recorded against the Property in the Office of the Recorder of the County of Alameda;

(f) The Title Company is prepared to issue the City Title Policy;

(g) The City has determined that the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that the Developer has obtained in connection with the Development, are not less than the amount that is necessary to pay for development of the Improvements;

(h) The Developer has obtained all permits and approvals necessary for the construction of the Improvements, and the building permit has been issued or is ready to be issued subject only to the payment of applicable fees, the posting of required security or both;

(i) The City has received a written draw request from the Developer, including certification that the condition set forth in Section 4.5(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Final Financing Plan as updated by the Closing Financing Plan, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

Section 4.6 Repayment of City Loan.

(a) Annual Payments. The Developer shall make payments of principal and interest to the City in the amount of the City Prorata Percentage of Residual Receipts. Such annual payments shall be due and payable in arrears no later than May 1 of each year with respect to the previous calendar year, commencing on May 1st of the first year after the City's issuance of a certificate of occupancy for the Improvements. The Developer shall provide the City with any documentation reasonably requested by the City to substantiate the Developer's determination of Residual Receipts. Repayments shall be credited first to interest, then to principal. The Developer may retain the remaining twenty-five percent (25%) of Residual Receipts.

(b) Sharing of Residual Receipts with Other Lenders. The City acknowledges that the County of Alameda (the "**County**") and other lenders to be set forth in the Final Financing Plan and Closing Financing Plan may provide additional financing for the Development. The City agrees to share in seventy-five percent (75%) of Residual Receipts with the County and such other approved lenders, pro-rata in proportion to the amount of City Loan, and the financing provided by the County and other approved lenders (the "**City Prorata Percentage**").

(c) Special Repayments from Net Proceeds of Permanent Financing. No later than sixty (60) days after Developer receives its final capital contribution from Developer's

limited partner investor, or if no limited partner investor, the date Developer has closed all permanent financing for the Development, Developer shall pay to the City as a special repayment of the City Loan, an amount equal to the City Prorata Percentage of one hundred percent (100%) of the Net Proceeds of Permanent Financing.

(d) Payment in Full. Developer shall pay all outstanding principal and accrued interest on the City Loan, in full, on the earliest to occur of (i) a Developer Event of Default for which the City exercises its right to cause the City Loan indebtedness to become immediately due and payable, and (ii) the expiration of the Term.

(e) Forgiveness. In the event this Agreement terminates prior to the Closing pursuant to Section 7.1 below, the Developer and Partnership shall assign and deliver to City all of their right, title and interest in and to all plans, specifications, drawings, sketches, studies, surveys and all other similar materials and documents which have been prepared for the Project. Upon such assignment, the Predevelopment Loan Component disbursed to the Partnership shall be forgiven.

Section 4.7 Prepayment. Developer may pay the principal and any interest due on the City Loan in advance of the time for payment thereof as provided in this Agreement, without penalty.

Section 4.8 Non-Recourse. Following recordation of the City Deed of Trust the Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the City Loan or the performance of the covenants of the Developer under the City Deed of Trust and City Regulatory Agreement. The sole recourse of the City with respect to the principal of, or interest on, the City Promissory Note and defaults by the Developer in the performance of its covenants under the City Deed of Trust and City Regulatory Agreement shall be to the property described in the City Deed of Trust. Notwithstanding the foregoing, however, the foregoing shall not in any way affect any rights City may have (as a secured party or otherwise) hereunder or under the City Promissory Note and City Trust Deed of Trust to recover directly from Developer any amounts, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, intentional misrepresentation or bad faith, waste, and any costs and expenses incurred by City in connection therewith (including without limitation reasonable attorneys' fees and costs).

Section 4.9 Subordination of City Deed of Trust and City Regulatory Agreement.

(a) Deed of Trust. The City agrees to subordinate the City Deed of Trust to the liens of the deeds of trust securing construction and/or permanent financing for the Improvements as shown on the approved Final Financing Plan.

(b) City Regulatory Agreement. Upon a determination by the City Manager that the requirements of Health and Safety Code Section 33334.14 are satisfied, the City shall subordinate the City Regulatory Agreement and the Notice of Affordability Restrictions, to the liens of the deeds of trust securing construction and/or permanent financing for the Improvements. In no event, however, shall the requirements to provide affordable units in satisfaction of the State Density Bonus Law be subordinated.

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Section 4.10 City Grant. The City hereby agrees to grant to the grantee designated by the Developer the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000), which funds will be used by the grantee to provide a loan to the Partnership to be used for all or a portion of the costs of construction and installation of the Community Space and tenant improvements for the Community Space, in accordance with the Scope of Development (the “**City Grant**”). The City Grant shall be disbursed in accordance with the Final Financing Plan as updated by the Closing Financing Plan.

Section 4.11 County A-1 Bond Funds.

The City hereby agrees to commit its allocation of County A-1 bond funds in the amount of Eight Million Seven Hundred Eighty-Seven Thousand One Hundred Twenty-One Dollars (\$8,787,121) to the Developer. The City agrees to take all actions which are necessary to commit its allocation of County A-1 bond funds.

Section 4.12 Public Art Requirements. In connection with Developer’s application for a density bonus for the Project, Developer shall be entitled to a Seventy-Five Thousand Dollars (\$75,000) limit on the public art fee applicable to the Development as one of the concessions and incentives that the Development is entitled to pursuant to the State Density Bonus Law.

ARTICLE 5.
CONSTRUCTION OF IMPROVEMENTS

Section 5.1 Construction Pursuant to Plans. The Improvements shall be constructed substantially in accordance with the Scope of Development and the terms and conditions of the land use permits and approvals and building permits, including any variances granted.

Section 5.2 Commencement of Construction. The Developer shall obtain a grading permit and building permit and commence construction of the Improvements within the time set forth in the Schedule of Performance.

Section 5.3 Completion of the Improvements. The Developer shall diligently prosecute to completion the construction of the Improvements within the time set forth in the Schedule of Performance.

Section 5.4 Equal Opportunity. During the construction of the Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the hiring, firing, promoting or demoting of any person engaged in the construction work.

Section 5.5 Compliance with Applicable Laws. The Developer shall cause all construction work to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, including without limitation, all applicable federal and state labor laws and standards, the City 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.*, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental City now having or hereafter acquiring jurisdiction. The work shall proceed only after the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction.

Section 5.6 Prevailing Wages.

(a) The Developer shall and shall cause its contractors and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to Labor Code Sections 1720 *et seq.*, and the implementing regulations of the Department of Industrial Relations (the "**DIR**"), to employ apprentices as required by Labor Code Sections 1777.5 *et seq.*, and the implementing regulations of the DIR and comply with the other applicable provisions of Labor Code Sections 1720 *et seq.*, 1777.5 *et seq.*, 1810-1815 and implementing regulations of the DIR.

(b) All calls for bids, bidding materials and the construction contract documents for the Development must specify that:

(1) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Development unless registered with the DIR pursuant to Labor Code Section 1725.5.

(2) The Development is subject to compliance monitoring and enforcement by the DIR.

(c) The Developer, as the "awarding body", shall register the Development as required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days after entering into the Construction Contract and provide evidence of such registration to the City within two (2) days of such registration and any additional registration reporting to the DIR.

(d) In accordance with Labor Code Sections 1725.5 and 1771.1, The Developer shall require that its contractors and subcontractors be registered with the DIR, and maintain such registration as required by the DIR.

(e) Pursuant to Labor Code Section 1771.4, the Development is subject to compliance monitoring and enforcement by the DIR. The Developer shall and shall require its contractors and subcontractors to submit payroll and other records electronically to the DIR pursuant to Labor Code Sections 1771.4 and 1776 *et seq.*, or in such other format as required by the DIR.

(f) The Developer shall and shall cause its contractors and subcontractors to keep and retain such records as are necessary to determine if prevailing wages have been paid as required pursuant to Labor Code Sections 1720 *et seq.*, and that apprentices have been employed as required by Labor Code Section 1777.5 *et seq.*, and shall, from time to time upon the request of the City provide to the City such records and other documentation reasonably requested by the City.

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(g) The Developer shall and shall cause its respective contractors and subcontractors to comply with all other applicable provisions of Labor Code, including without limitation, Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and implementing regulations of the DIR in connection with construction of the Development or any other work undertaken or in connection with the Property.

(h) Copies of the currently applicable current per diem prevailing wages are available from the DIR website, www.dir.ca.gov. The Developer shall cause its respective contractors to post the applicable prevailing rates of per diem wages at the Development site and to post job site notices, in compliance with Title 8 California Code of Regulations 16451(d) or as otherwise as required by the DIR.

Section 5.7 Progress Report. The Developer shall provide quarterly progress reports to the City regarding the status of the construction of the Development. The Developer shall provide the reports and information required under this Section until the Development is fully leased up.

Section 5.8 Construction Responsibilities. The Developer shall be responsible for coordinating and scheduling the work to be performed so that commencement and completion of the construction of the Improvements will take place in accordance with this Agreement. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, and consultants. Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 5.9 Inspections. The Developer shall permit and facilitate, and shall require its contractors, to permit and facilitate, observation and inspection at the Development by the City during reasonable business hours for the purposes of determining compliance with this Agreement. The rights granted to the City pursuant to this Section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority, including, but not limited to, any inspection rights related to the grading permit and building permit for the Property.

Section 5.10 Information. The Developer shall provide any information reasonably requested by the City in connection with the Development.

Section 5.11 Records. The Developer shall maintain complete, accurate, and current records pertaining to the Development for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records upon reasonable notice to the Developer. Such records shall include, without limitation, all invoices, receipts, and other documents related to expenditures from the City Loan funds. Records must be kept accurate and current.

Section 5.12 Liens and Stop Notices. Until the issuance of a Certificate of Occupancy, 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 Development or the Property, 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.

Section 5.13 Right of City to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property pursuant to and within the time period set forth in Section 5.12 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.

Section 5.14 Performance and Payment Bonds. Prior to commencement of construction work on the Development, 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 the Development. The bonds shall name the City as co-obligee. In lieu of such performance and payment bonds, subject to City's approval of the form and substance thereof, Developer may submit evidence satisfactory to the City one of the following:

(a) Developer shall cause its general contractor to provide evidence of Subcontractor Default Insurance covering one hundred percent (100%) of the Development subcontract value. Contractor shall require those Subcontractors that do not enroll in the Subcontractor Default Insurance Policy to furnish payment bond(s) and performance bond(s) in forms acceptable to and approved by the City. General Contractor shall schedule the City and Developer to the Subcontractor Default Insurance policy via a Scheduled Entity Endorsement; or

(b) the contractor's ability to commence and complete construction of the Development in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the City required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to City. Such evidence must be submitted to City in approvable

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form in sufficient time to allow for review and approval prior to the scheduled construction start date.

ARTICLE 6.
ONGOING DEVELOPER OBLIGATIONS

Section 6.1 Use. The Developer hereby agrees that, for the entire Term, the Development will be used and continuously operated as affordable housing in accordance with all applicable requirements of the Redevelopment Law, and the City Regulatory Agreement, and for Permitted Community Uses.

Section 6.2 City Regulatory Agreement. The City and the Developer shall execute the City Regulatory Agreement, which shall be substantially in the form attached hereto as Exhibit H, and cause it to be recorded against the Property concurrently with the Closing. The City Regulatory Agreement shall provide, among other matters, for the lease of thirty nine (39) units in the Property to Extremely Low Income or lower and Very Low Income Households or lower, at affordable rents, as defined in the City Regulatory Agreement, for a period of ninety-nine (99) years, subject to the terms and conditions in the City Regulatory Agreement. In the event of a conflict between the City Regulatory Agreement and this Agreement, the City Regulatory Agreement shall control. Developer may request changes to the mix of affordable units if necessary to obtain competitive sources of financing for the Development. Any such changes shall be subject to the approval of the City Manager, which approval shall not be unreasonably withheld or delayed. In addition, the parties agree to record against the Property a Notice of Affordability Restrictions on Transfer of Property, substantially in the form attached hereto as Exhibit I. The City Regulatory Agreement is intended by the City and Developer to satisfy the requirements of the State Density Bonus Law for an agreement between the Developer, as the density bonus applicant, and the City for the continued affordability of all very low and low income rental units that qualified the Developer for the award of the density bonus, for a term of 55 years or longer, as provided in Health and Safety Code Section 65915(c)(1).

Section 6.3 Sublease of Community Space to City. Developer shall sublease to City an approximately Six Thousand (6,000) square foot portion of the Development, designated as the "Community Space" in the Scope of Development and Construction Plans. The terms of the sublease of the Community Space shall be set forth in a Community Space Sublease, substantially in the form attached hereto as Exhibit J. The Community Space Sublease shall provide for rent in the amount of One Dollar (\$1.00) per year. The Community Space Sublease shall be executed upon the Closing. The City agrees to reasonably consider making changes to the Community Space Sublease at the request of the Investor or the Developer's lenders. The Developer shall deliver occupancy of the Community Space to the City with complete tenant improvements in accordance with the Construction Plans upon the completion of construction of the Development. The use of the Community Space shall be for Permitted Community Uses only.

Section 6.4 Maintenance. The Developer hereby agrees that after commencement of the Ground Lease term and prior to completion of construction of the Improvements, the portions of the Property undergoing construction shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards, and that, once the Improvements are completed, the Development shall be well maintained by the Developer as

to both external and internal appearance of the Improvements, the common areas, and the open spaces, consistent with the standards of maintenance of similar multifamily apartment complexes in the San Francisco Bay Area.

Section 6.5 Taxes and Assessments. The Developer is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development other than the Community Space after the Closing, and shall pay such charges prior to delinquency. However, Developer is not required to pay and discharge any such charge so long as the legality thereof is being contested diligently and in good faith and by appropriate proceedings. Developer may apply for and obtain any available exemptions from the payment of property taxes. The City and/or its subtenant shall be responsible for the payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Community Space, if any.

Section 6.6 Mandatory Language in All Subsequent Deeds, Leases and Contracts. All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to or relating to a transfer of an interest in any portion of the Property shall contain or be subject to substantially the following language:

(a) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, 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) and (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 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) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 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:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, 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) and (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 leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises 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 premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 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:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 6.7 Hazardous Materials.

(a) Covenants.

(1) No Hazardous Materials Activities. 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 except: (x) as may be authorized by an agency of applicable jurisdiction, (y) for cleaning supplies and other materials in volumes and concentrations customarily used in construction, rehabilitation, use or maintenance of residential properties similar in nature to the Property and any commercial uses developed as part of the Development, and used, stored and disposed of in compliance with Environmental Laws; and (z) as may otherwise be allowed under Environmental Laws. For avoidance of

ambiguity only, nothing in the previous sentence shall limit Developer from maintaining Hazardous Materials existing on the Property prior to the Commencement Date or consolidating such Hazardous Materials on the Property, all to the extent permitted by law.

(2) Hazardous Materials Laws. The Developer hereby represents and warrants to the City that, at all times from and after the Closing, the Developer shall comply and cause the Improvements developed on the Property to comply with Hazardous Materials Laws, and shall further cause no action to place the Property, including without limitation, soil and groundwater, in violation of Environmental Laws.

(3) Notices. 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 in writing against the Developer, or the Property pursuant to any applicable Environmental Laws; (ii) any and all written 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; or (iii) the presence or release of previously unknown Hazardous Material in, on, under, about or from the Property. The matters set forth in the foregoing clauses (i) through (iii) 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.

(b) Developer Acknowledgement. The Developer hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and Developer's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(c) Environmental Indemnity. Except to the extent of the Developer's Indemnification, to the greatest extent allowed by law, Developer shall indemnify, defend (with counsel reasonably 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 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 occurring after the Closing, 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 ("**Developer Parties**") to comply with Environmental Laws related to the Property or the Improvements thereon, unless caused by the City's active or passive negligence. Further excepting Developer's Indemnification, the foregoing indemnity shall additionally apply to any residual Hazardous Materials in, on, under or about the Property or affecting any 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, but only to the extent that such release of Hazardous Materials occurs after the Closing. City agrees to defend, indemnify, protect and hold harmless the Developer, and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("**Developer Indemnitees**") from,

regarding and against any and all liabilities, obligations (including but not limited to the duty to respond to any governmental inquiry, investigation, claim or demand regarding such Hazardous Materials), orders, decrees, judgments, liens, demands, actions, Environmental Response Actions, claims, losses, damages, fines, penalties, expenses, Environmental Response Costs or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting from or in connection with (i) the 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 occurring during the City's ownership of the Property and prior to the Closing, or (ii) the failure of City, City'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 related to the Property or the improvements thereon during the City's ownership of the Property and prior to the Closing, except to the extent caused in whole or in part by the negligence of any of the Developer Indemnitees in accordance with the principles of comparative negligence ("**Developer's Indemnification**"). If the City discovers Hazardous Materials or other materials subject to legal requirements or corrective action, the City shall immediately notify the Developer of the same.

Section 6.8 Insurance Requirements.

(a) Prior to initiating work on the Development and continuing through the City's issuance of a Certificate of Occupancy for the Improvements, Developer and all general contractors directly contracted with Developer to work on behalf of Developer on the Development shall maintain a commercial general liability policy in the amount of One Million Dollars (\$1,000,000) 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) Until issuance of the Certificate of Occupancy, Developer and all contractors working on behalf of the Developer shall maintain comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Developer and any contractor with whom Developer has contracted for the performance of work on the Property or otherwise pursuant to the Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insured. Automobile liability policies shall only be required if Developer or contractors own or operate vehicles in connection with the construction of the Development.

(c) Upon commencement of construction work and continuing until the City's issuance of the Certificate of Occupancy for the Improvements, Developer shall maintain or cause to be maintained a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Development on a replacement cost basis naming City as loss payee.

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(d) Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required by lenders and/or investor) for 100% of the replacement value of the Development with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(e) Companies writing the insurance required hereunder shall be approved 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.

(f) 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 days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

(g) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within thirty (30) 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.

(h) 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 Development, and shall provide City with certified copies of the required insurance policies upon request.

(i) General Requirements. The required insurance shall be provided under an occurrence form, and the Developer shall maintain such coverage continuously throughout the Term. The Comprehensive General Liability policies shall be endorsed to name as additional insureds the City and its commissioners, members, officers, agents, and employees. All policies and bonds shall contain (i) an agreement that such policies are primary and noncontributing with any insurance that may be carried by the City; (ii) a provision that no act or omission of the Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (iii) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against, and (iv) the agreement of the insurer to give the City at least ten (10) days' notice prior to cancellation (including, without limitation, for nonpayment of premium) or any material change in said policies.

(j) Certificates of Insurance. Upon the City's request at any time during the Term of this Agreement, the Developer shall provide certificates of insurance, in form and with insurers reasonable acceptable to the City, evidencing compliance with the requirements of this Section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the City as additional insured, if requested by the City.

Section 6.9 Transfer.

(a) Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Property 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.

(b) During the Term of this 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 Development, the Improvements, or this Agreement, without the prior written approval of City, which approval shall not be unreasonably withheld; provided that no further approvals of City shall be required for Permitted Transfers as set forth herein. 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. For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under this Agreement; and/or (ii) any interest in the Development. The term "Transfer" excludes the leasing of any single unit in the Development to an occupant in compliance with the City Regulatory Agreement, or the lease of the Community Space pursuant to the Community Space Sublease.

(c) The City hereby approves the Transfer of the Property and assignment of the City Documents to the Partnership as a Permitted Transfer, provided that the assignment agreement or other document evidencing the assignment is reasonably acceptable to the City.

(d) The Developer anticipates syndicating the low income housing tax credits that will be generated by the Development, which syndication will require transfer of the limited partnership interest in the Partnership to a tax credit investor (the "**Investor**"). The City hereby approves transfer of the limited partnership interest to the Investor and future Transfers of the Investor's limited partner interest as a Permitted Transfer, provided that Developer or its affiliate remains as the managing general partner of the Partnership.

(e) In the event the general partner of the Partnership is removed by the Investor for cause following default under the Partnership Agreement, the City hereby approves the Transfer of the general partner interest as a Permitted Transfer, provided the replacement general partner is reasonably acceptable to City.

(f) The City hereby approves a Transfer of the Property from the Partnership to the Developer, or a non-profit affiliated entity of the Developer, and an assumption of the

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Loan by such transferee on or before the end of the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended, as a Permitted Transfer.

(g) The City hereby approves the grant of the security interests in the Development for financing approved by the City on the Final Financing Plan as updated by the Closing Financing Plan, as a Permitted Transfer.

(h) The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement which is not a Permitted Transfer, the Property or portion thereof if all of the following requirements are met:

(1) 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 the Development and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(2) 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 this Agreement, the Property or interest therein together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(3) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement 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 all other conditions, and restrictions set forth in this Agreement.

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

(5) Consent to any proposed Transfer may be given by the City Manager unless the City Manager in his discretion, refers the matter of approval to the City Council. If a proposed Transfer has not been approved in writing within thirty (30) days following City's receipt of written request by Developer, it shall be deemed rejected.

(i) 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. If, in violation of this Agreement, the Developer Transfers all or any part of the Property or the Improvements during the Term of this Agreement, the City shall be entitled to receive from Developer the amount by which the consideration payable for such Transfer exceeds the sum of (a) the Purchase Price for the Property, and (b) the costs incurred by Developer in connection with the improvement and development of the Property, including carrying charges, interest, fees, taxes, assessments and escrow fees. Such excess consideration shall belong to and be paid to the City by the Developer and until so paid, the City shall have a lien on the Property for such amount. The provisions of this paragraph have been agreed upon so as to discourage land speculation by Developer; accordingly, these provisions shall be given a liberal interpretation to accomplish that end. Without limiting any other remedy City may have

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under this Agreement, or under law or equity, it shall be an Event of Developer Default hereunder entitling City to terminate this Agreement if without the prior written approval of the City, Developer assigns or Transfers this Agreement, the Improvements, or the Property during the Term of this Agreement. This paragraph shall not apply to Permitted Transfers.

(j) Recovery of 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 under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten days following City's delivery to Developer of an invoice detailing such costs.

ARTICLE 7.
DEFAULT AND REMEDIES

Section 7.1 No Fault of Parties. The following events constitute a basis for a Party to terminate this Agreement without the fault of the other:

(a) The Developer disapproves the condition of the Property within the Due Diligence Period, or there shall have been an adverse change in the condition of the Property, or discovery of a physical condition that would adversely interfere with the development of the Development since the conclusion of the Due Diligence Period but prior to the Closing; or

(b) The Conditions Precedent to the Closing have not been satisfied (or waived by the Party benefitted by such Conditions Precedent) on or before the time set forth in the Schedule of Performance.

Upon the happening of any of the above-described events the City and the Developer shall meet in good faith within ten (10) days of either Party giving notice to the other of the above conditions to determine whether a mutually acceptable amendment to this Agreement and/or modification to the scope of development for the Development is feasible. If the City and the Developer are unable to agree on a mutually satisfactory modification, the parties may agree to terminate this Agreement, and at the election of either Party, this Agreement may be terminated by written notice to the other Party. After termination, neither Party shall have any rights against or liability to the other under this Agreement.

Section 7.2 Fault of City. Except as to events constituting a basis for termination under Section 7.1, the following events each constitute a "**City Event of Default**" and a basis for the Developer to take action against the City:

(a) The City, without good cause, fails to convey the Property to the Developer within the time and in the manner set forth in Article 3 and the Developer is otherwise entitled by this Agreement to such conveyance; or

(b) The City does not attempt diligently and in good faith to cause satisfaction of the conditions required of the City in Article 2; or

(c) Other than the failures addressed above in subsections (a) and (b), failure of the City to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of this Agreement, and such failure having continued uncured for thirty (30) days after

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receipt of written notice thereof from the Developer to the City or, if the breach cannot be cured within thirty (30) days, the City shall not be in breach so long as the City is diligently undertaking to cure such breach and such breach is cured within ninety (90) days.

Upon the occurrence of any City Event of Default hereunder following the expiration of all applicable notice and cure periods the Developer is afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating in writing this Agreement; and (2) prosecuting an action for specific performance. Developer shall not have any right to and Developer waives all claims against City for any lost profits, and punitive or consequential damages.

Section 7.3 Fault of Developer. Except as to events constituting a basis for termination under Section 7.1, the following events each constitute a "**Developer Event of Default**" and a basis for the City to take action against the Developer:

- (a) Subject to Forced Delay, Developer fails to commence or complete construction of the Development within the times set forth in the Schedule of Performance, or abandons or suspends construction of the Development prior to completion for a period of sixty (60) days or more;
- (b) A Transfer occurs, either voluntarily or involuntarily, in violation of Section 6.9;
- (c) Developer fails to maintain insurance as required pursuant to this Agreement, and Developer fails to cure such default within thirty (30) days of receipt of notice from the City;
- (d) Subject to Developer's right to contest the following charges as provided herein, if Developer fails to pay prior to delinquency taxes or assessments due on the Property or the Development or fails to pay when due any other charge that may result in a lien on the Property or the Development, and Developer fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien;
- (e) 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;
- (f) 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 and the Developer fails to cure such default within thirty (30) days of the date of written notice from the City of such default;
- (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**"), Developer or any manager, managing member or general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any general partner, managing member, or manager thereof in an involuntary case; (iii)

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consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any manager, managing member or 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) 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;

(i) 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 under 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;

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

(k) A default arises under the Ground Lease, the City Promissory Note or the City Deed of Trust and remains uncured beyond any applicable notice and cure period; or

(l) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 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, a Developer Event of 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 and in no event later than ninety (90) days after receipt of notice of the default.

City shall have all remedies available under this Agreement or under law or equity, including, but not limited to the right to 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 to obtain any other remedy consistent with the purpose of this Agreement, and the right to proceed with any and all remedies set forth in this Agreement and the City Documents, including but not limited to the Termination of this Agreement by written notice to the Developer; termination of the Ground Lease, or Acceleration of the City Loan, provided however, the City shall not have any right to and City waives all claims against Developer for any lost profits, and punitive or consequential damages.

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Section 7.4 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.

Section 7.5 Construction Plans. If this Agreement is terminated, 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 Development on the Property, including without limitation, the Construction Plans, subject only to the rights of senior construction lenders identified in the Final Financing Plan as updated by the Closing Financing Plan. In the event the City utilizes the construction plans or studies, the City shall indemnify the Developer for any claims arising from the use of construction plans or studies by the City pursuant to this Section 7.5.

Section 7.6 Rights of Mortgagees. Any rights of the City under this Section 7 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.

ARTICLE 8. SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 8.1 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Developer's leasehold interest in the Property for the purpose of securing loans approved by the City pursuant to the approved Final Financing Plan as updated by the Closing Financing Plan. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the City pursuant to the approved Final Financing Plan as updated by the Closing Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 8.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, 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 of improvements provided for or authorized by this Agreement.

Section 8.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 8 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's leasehold interest in the Property or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within ninety (90)

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days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement.

Section 8.4 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the construction of the Development, and the holder has not exercised its option to complete the construction of the Development, the City may cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default, and such sum shall be added to the principal of the City Loan and payable pursuant to the City Promissory Note.

Section 8.5 Modifications. If a holder of a Security Financing Interest or the Investor should, as a condition of providing financing for development of all or a portion of the Development, request any modification of this Agreement in order to protect its interests in the Development or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the parties under this Agreement.

ARTICLE 9.
GENERAL PROVISIONS

Section 9.1 Notices, Demands and Communications. Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, by reputable overnight delivery service, delivered by electronic mail as long as a copy of any such notice is also delivered by either registered or certified mail or overnight delivery, or delivered personally, to the principal office of the City and the Developer as follows:

City: City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
Attn: City Manager
email: jmalloy@unioncity.gov

Developer: MidPen Housing Corporation
303 Vintage Park Dr. Suite 250
Foster City, CA 94404

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Attn: Jan M. Lindenthal, Chief Real Estate Development Officer
email: jlindenthal@midpen-housing.org

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section.

Section 9.2 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City or the Developer shall be personally liable, in the event of any default or breach by the such Party or for any amount which may become due under the terms of this Agreement.

Section 9.3 Forced Delay. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; acts of terrorism, insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; pandemics, quarantine or other government restrictions imposed to address epidemics or pandemics; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather; inability to secure necessary labor, materials or tools; acts of the other Party; acts or failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within fifteen (15) days from the date the Party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other Party within fifteen (15) days after receipt of the notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

City and Developer acknowledge that 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 Development 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.

Section 9.4 Title of Parts and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 9.5 Indemnification. Except with respect to indemnification concerning Hazardous Materials, which are addressed under Section 6.7(c) of this Agreement, Developer shall indemnify, defend, and hold the City and its Council Members, officers, employees, consultants, agents and representatives (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including without limitation reasonable attorneys' fees and costs) (all of the foregoing, collectively “**Claims**”) arising out of or in connection with this Agreement, including but not limited to the purchase of the Property and the development,

construction, marketing and operation of the Development, except to the extent such claim arises from pre-existing conditions or from the negligence or willful misconduct of the Indemnitees. Developer's defense and indemnity obligations pursuant to this Section 9.5 shall survive the expiration or earlier termination of this Agreement.

Section 9.6 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California. 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.

Section 9.7 No Brokers. Each Party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the Party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified Party's choice, and hold the indemnified Party harmless from all expense, loss, damage and claims, including the indemnified Party's attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 9.8 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 9.9 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. However, on the termination of this Agreement, such covenants and restrictions shall expire.

Section 9.10 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 9.11 Action by the City. Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to the Developer by the City, without further approval by the City Council. Any such action shall be in writing. The Developer acknowledges that nothing in this Agreement (including any

approval by the City Manager in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (i) the City's Planning Department, in connection with the review and approval of the proposed construction plans for the Development (or any change to such plans), or any use, or proposed use, of the Property, (ii) the City's issuance of a building permit, or (iii) any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Development.

Section 9.12 City's Warranty of Good Standing and Authority. The City represents and warrants to the Developer that (i) this Agreement has been duly entered into and is the legally binding obligation of the City, (ii) this Agreement will not violate any judgment, law, consent decree, or agreement to which the City is a party or is subject to and will not violate any law or ordinance under which the City is organized, and (iii) there is no claim pending, or to the best knowledge of the City, threatened, that would impede the City's ability to perform its obligation hereunder.

Section 9.13 Representations and Warranties of the Developer. The Developer hereby represents and warrants to the City as follows:

(a) Organization. The Developer is a duly organized, validly existing, and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, and the other City Documents to be executed and delivered pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Developer.

(d) No Conflict. To the best of Developer's knowledge, the Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound.

Section 9.14 Complete Understanding of the Parties. This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof, specifically including the ENRA which is of no further force or effect as of the Effective Date..

Section 9.15 Implementation Agreements. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility

with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through implementation agreements approved in writing by the Parties which, after execution shall be attached to this Agreement as addenda and become a part hereof.

Implementation agreements may be executed on the City's behalf by the City Manager, or his or her designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Agreement, including but not limited to amendments or modifications to the City Loan, shall be processed as an amendment of this Agreement in accordance with Section 9.16 and must be approved by the City Council in accordance with applicable law.

Section 9.16 Amendments. Except as set forth in Section 9.15, the Parties can amend this Agreement only by means of a writing signed by both Parties, following approval by the City Council, in accordance with applicable law.

Section 9.17 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 9.18 Attorneys' Fees. If any Party fails to perform any of its obligations under this Agreement, or if any dispute arises among 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.

Section 9.19 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.

Section 9.20 No Third Party Beneficiaries. 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.

Section 9.21 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 California.

DRAFT

Section 9.22 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.

[SIGNATURES ON FOLLOWING PAGE]

DRAFT

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the Effective Date.

DEVELOPER:

MIDPEN HOUSING CORPORATION, a
California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

CITY:

CITY OF UNION CITY

By: _____

Its: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

DRAFT

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT A

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

PARCEL ONE:

Lots 15 and 16, Block 38, Map of Amended Plan of Decoto, filed December 1, 1904, Map Book 19, Page 43, Alameda County Records.

EXCEPT:

That portion described in the Deed from Joseph Caldeira and Stella Caldeira to the State of California, recorded April 11, 1930, Series No. AA/22971, Book 2345, Page 280.

PARCEL TWO:

Lot 14, Block 38, Map of Amended Plan of Decoto, filed December 1, 1904, Map Book 19, Page 43, Alameda County Records.

EXCEPT:

That portion described in the Deed from James D. Fleming and Mary E. Fleming to the State of California, recorded June 9, 1930, Series No. AA/36048, Book 2395 Official Records Page 196.

PARCEL THREE:

Lots 1, 2 and 3, Block 38, Map of Amended Plan of Decoto, filed December 1, 1904 Map Book 19, Page 43, Alameda County Records.

PARCEL FOUR:

Beginning at a point marked by a 1" iron bolt, said bolt being on the Southwesterly line of Mission Boulevard and located South 41° 39' 30" East 5.00 feet from the intersection of the centerline of D Street with the Southwesterly line of Mission Boulevard and running thence from said bolt along the Southwesterly line of Mission Boulevard South 41° 39' 30" East 175.00 feet to the true point of beginning, said true point of beginning being the intersection of the Northwesterly line of Lot 13, Block 38, "Amended Plan of Decoto", filed December 1, 1904, Map Book 19, Page 43, Alameda County Records, with the Southwesterly line of the portion of lot conveyed to the State of California by Deed recorded June 9, 1930 in Book 2395, Page 196, Official Records of Alameda County; running thence from said true point of beginning along the Southwesterly line of Mission Boulevard South 41° 39' 30" East 100.02 feet to a point; thence along the line between Lots 11 and 12 as shown on aforementioned "Amended Plan of Decoto", South 47° 06' 30" West 85.00 feet; thence North 41° 39' 30" West 100.02 feet; thence along line between Lots 13 and 14 as shown on aforementioned "Amended Plan of Decoto", North 47° 06' 30" East 85.00 feet to the true point of beginning.

Being a portion of Lots 4 and 5 and all of Lots 12 and 13, Block 38, as shown on previously described "Amended Plan of Decoto"; EXCEPTING THEREFROM the portions of Lots 12 and 13 conveyed to the State of California by Deeds recorded March 18, 1930 in Book 2312, Page 377 of Official Records and June 9, 1930 in Book 2395, Page 196 of Official Records.

PARCEL FIVE:

Lots 4 and 5, Block 38, "Amended Plan of Decoto", filed December 1, 1904, Map Book 19, Page 43, Alameda County Records.

DRAFT

EXCEPTING THEREFROM that portion conveyed to Richard L. Scardigli, et al, by Deed recorded May 3, 1966, Reel 1760, Image 736 of Official Records.

PARCEL SIX:

Lots 7, 8, 9 and 10, Block 38, Amended Plan of Decoto, filed December 1, 1904, Map Book 19, Page 43, Alameda County Records.

EXCEPTING THEREFROM those portions of Lot 9 and Lot 10 conveyed to the State of California by Deeds recorded March 18, 1930 and June 9, 1930 in Book 2312, Page 377 and Book 2395, Page 196 of Official Records.

PARCEL SEVEN:

Being Lots 6 and 11, Block 38, a designated on the map entitled "Amended Plan of Decoto", filed December 1, 1904 in Book 19 of Maps at Page 43, Official Records of Alameda County.

EXCEPTING THEREFROM that portion of Lot 11 conveyed to the State of California by Deeds recorded March 18, 1930 and June 9, 1930 in Book 2312, Page 377 and Book 2395, Page 196, Official Records of Alameda County.

Pursuant to that certain Lot Line Adjustment recorded November 12, 2003, as Series No. 2003670453, Official Records of Alameda County.

APN: 486-0003-028 (Parcel Three)

486-0003-029 (Parcels One and Two) 486-

0003-030 (Parcels Four)

486-0003-035 (Parcel Five)

486-0003-034-04 (Parcel Six)

486-0003-034-03 (Parcel Seven)

EXHIBIT B

SCHEDULE OF PERFORMANCE

This Schedule of Performance summarizes the schedule for various activities under the Disposition, Development, and Loan Agreement (the "**Agreement**") to which this exhibit is attached. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Schedule of Performance to other provisions of the Agreement and shall not be deemed to have any substantive effect. As provided in Section 2.1 of this Agreement, this Schedule of Performance may be modified in accordance with Section 9.15 of this Agreement.

Action	Date
1. <u>Title Report</u> . City shall direct Title Company to provide Developer an updated Title Report. [§2.7]	Within twenty (20) days of execution of this Agreement.
2. <u>Developer Deposit</u> . Return of unexpended portion of Deposit to Developer. [§2.5]	Within five (5) business days of execution of this Agreement.
3. <u>Developer Secures Financing</u> . Developer shall submit applications for financing for Development, including to the County of Alameda, State Department of Housing and Community Development and Strategic Growth Council	Next available notice of funding availability rounds after Effective Date of the Agreement.
4. <u>Application – Tax Credits (First Application)</u> . Developer shall submit an application to TCAC for a preliminary reservation of 4% tax credits. [§2.4]	Next available TCAC round immediately following Effective Date after Developer has secured all other required soft financing for a TCAC application.
5. <u>Application – Tax Credits (Subsequent Applications)</u> . Developer shall submit a second and subsequent applications to TCAC for a preliminary reservation of 4% tax credits if the first application is unsuccessful. [§2.4]	Next available TCAC round immediately following disapproval of previous application.

Action	Date
7. <u>Submission – Financing Plan.</u> Developer shall prepare and submit the Final Financing Plan for City approval. [§2.3]	Within 120 days after receipt of tax credit allocation from TCAC.
8. <u>Approval – Final Financing Plan.</u> The City shall approve or disapprove the proposed Final Financing Plan. [§2.3]	Within 30 days after receipt of the Final Financing Plan. Opportunity is provided in §2.5 for resubmission and further review of a disapproved Final Financing Plan.
9. <u>Submission of Construction Plans.</u> Developer shall submit Construction Plans to the City for approval. [§2.8]	Within one hundred fifty (150) days of receipt of tax credit allocation from TCAC.
10. <u>Closing.</u> City shall lease the Property to Developer. [§3.4; 3.5]	Upon satisfaction or waiver of conditions set forth in Section 3.4 and 3.5, but in no event later than (i) December 31, 2025, with a one-year extension to be permitted if approved by the City Manager or his or her designee, and (ii) the latest date permitted under the Surplus Lands Act, Government Code §54220, et seq.
11. <u>Commencement of Construction.</u> Developer shall obtain a building permit and commence construction of the Development. [§5.2]	Within one hundred ninety four (194) days of receipt of tax credit allocation from TCAC.
12. <u>Completion of Construction.</u> Developer shall complete construction of the Development. [§5.3]	Within 24 months after commencement.
13. <u>Progress Reports.</u> Developer shall provide quarterly progress reports to the City. [§5.6]	Until Development is fully leased-up.

EXHIBIT C

SCOPE OF DEVELOPMENT

The following describes the Lazuli Landing development (“**Project**”) proposed by MidPen Housing Corporation (“**MidPen**”). While this summary presents the program currently envisioned for the proposed development, it is understood that modifications may be made with mutual agreement between MidPen and City of Union City (“**City**”).

1. Proposed Onsite & Offsite Improvements

The Lazuli Landing project site is a 1.6 acre vacant site, currently owned by the City, and the project site is bounded by Mission Boulevard, 2nd Street, D Street, and E Street.

On this vacant site, MidPen shall construct a mixed-use development with construction of 81 total new units (including 1 onsite manager’s unit that is not subject to affordability or occupancy restrictions) and approximately 6,000 square feet of ground floor office space for sublease to the City.

The Project shall include 81 units and shall receive a density bonus pursuant to state law. The Project will include 23 one-bedroom units, 37 two-bedroom units, and 21 three-bedroom units, subject to City approval. Due to funding source requirements, the proposed development will be required to have a certain percentage of larger bedroom types, including the two and three-bedroom units, which may be revised with mutual approval of the Parties. The unit mix shall be as follows:

Overall Unit Mix

1 bedroom	23 units
2 bedroom	37 units
3 bedroom	21 units
TOTAL UNITS	81

The approximate residential parking ratio will be 1.3:1. Developer shall underground all existing overhead utilities, which are located along the street frontage of 2nd Street, D Street, and E Street. Developer shall comply with the requirements of local utility agencies, such as Alameda County Water District (**ACWD**) and Union Sanitary District (**USD**), with respect to offsite improvement work to service the Project.

2. Ground Floor Office Space for City

The Project shall include approximately 6,000 square feet of ground floor office space suitable for City and nonprofit, governmental, or community organization use in one of the two buildings (“**Community Space**”). MidPen will construct and develop the commercial shell as well as the tenant improvements (“**TIs**”) for the Community Space. The TIs shall be suitable for office space for staff, meeting space to meet with clients, amenities to support clients, including limited food pantry storage, clothes washer and dryer machine, and showers. 9 onsite parking spaces

enclosed within the Project parking garage will be made available exclusively to City as part of the leased Community Space.

3. Resident Amenities and Open Space

The Project shall include various indoor and outdoor amenities available to residents living at the Property, including a community room, playground, after-school program room, and outdoor seating with a BBQ area. The Project will include an office for MidPen Property Management and Services for staff working at the property and to meet with residents.

4. Tentative and Final Parcel Map

MidPen will prepare a tentative and final parcel map for the Project for the approval of the City, to merge the existing multiple parcels.

EXHIBIT D

GROUND LEASE

by and between

City of Union City, as Lessor

and

MP Lazuli Landing Associates, L.P., as Lessee

Dated as of _____, _____

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- Exhibit E: Financing Plan

EXHIBIT D
GROUND LEASE
(Lazuli Landing)

This Ground Lease (the "**Lease**") is entered into as of _____, 20____, ("**Commencement Date**") by and between the City of Union City, a California municipal corporation ("**Lessor**"), and MP Lazuli Landing Associates, L.P, a California limited partnership ("**Lessee**").

RECITALS

A. MidPen Housing Corporation, a California nonprofit public benefit corporation ("**MidPen**") and Lessor, entered into that certain Disposition, Development and Loan Agreement for the Lazuli Landing Project dated _____, 2020 as assigned to Lessee pursuant to that certain Assignment and Assumption of DDLA by and among MidPen, Lessor and Lessee dated as of _____, _____ (as assigned, the "**DDLA**").

B. Lessor is the owner of that certain real property in the City of Union City, 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 ninety-nine (99) years, and Lessee has agreed to develop and operate thereon an eighty-one (81) unit multifamily rental housing development with long term affordability requirements, including one manager's unit that will not be subject to affordability requirements and approximately 6,000 square feet of ground floor office space (the "**Improvements**").

C. Lessor desires to lease the Land to Lessee for a period of ninety-nine (99) years pursuant to the terms of this Lease.

D. 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) Applicable Laws: As defined in Section 9.6.
- (b) Approved Loans: All loans, including without limitation, the City Loan, obtained from time to time by Lessee for the construction and permanent financing of the

EXHIBIT D

Improvements in compliance with the Financing Plan attached hereto as Exhibit E, as such Financing Plan may be revised from time to time by written consent of the Parties.

(c) Casualty: As defined in Article 11 hereof.

(d) City: The City of Union City, California.

(e) City Loan: means that certain construction/permanent loan to be provided by City to Lessee pursuant to the terms set forth in the DDLA in the amount of Five Million Thirty Four Thousand Nine Hundred Twenty Four Dollars (\$5,034,924).

(f) 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.

(g) Commencement Date: The date set forth in the first paragraph of this Lease.

(h) Community Space. The approximately 6,000 square feet of ground floor office space more particularly described in the Scope of Development attached as Exhibit D. For avoidance of doubt, the Community Space is separate and distinct from the resident community room, after-school program room or any other space designated as Resident amenities in the Scope of Development attached as Exhibit D.

(i) County: The County of Alameda, California.

(j) Development: Development shall have the same meaning set forth in the DDLA.

(k) DDLA: As defined in Recital A.

(l) Environmental Laws: 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, groundwater or soil, as now or may at any later time be in effect, together with any regulations promulgated thereunder.

(m) Event of Default: As described in Article 12 of this Lease.

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(n) Governmental Authorities: Any 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.

(o) Hazardous Materials: 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 biphenyl; 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. Hazardous Materials do not include substances that are used or consumed in the normal course of constructing, developing, operating, or occupying a residential and office mixed-use project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

(p) Impositions: All taxes, including without limitation, possessory interest 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, trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Leased Premises. "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

EXHIBIT D

tax, assessment or charge imposed upon the rent or other benefit received by Lessor under this Lease by any Governmental Authorities. Impositions shall not include any possessory interest taxes, assessments, water or sewer charges, charges for public utilities or other charges assessed, levied or imposed on the Community Space as a result of the City's or other nonprofit or community organization's use of the Community Space.

(q) Improvements: The eighty-one (81) units of affordable housing for income-eligible households, including one (1) manager's unit that will not be subject to affordability restrictions, to be constructed in accordance with this Lease and the DDLA, (ii) the Community Space, and (iii) related onsite improvements, parking, landscaping and other improvements located or to be located on the Land. The Improvements are also referred to in this Lease as the "Project".

(r) Indemnitees: Lessor and its elected and appointed officials, officers, employees, agents, contractors, representatives and volunteers.

(s) Insurance Requirements: 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.

(t) Investor: The low income housing tax credit investor that will provide equity to the Project

(u) Land: As defined in Recital A above.

(v) Lease Year: A calendar year.

(w) Leased Premises: The Land, together with the Improvements and any other improvements now or hereafter located thereon, and together with all and singular rights, easements, licenses, privileges and appurtenances thereunto attaching or in any way belonging thereto.

(x) Leasehold Mortgage: Any mortgage, deed of trust, security agreement or collateral assignment pursuant to an Approved Loan encumbering Lessee's Estate as a leasehold mortgage lien.

(y) Legal Requirements: 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.

(z) Lender: The holder, mortgagee, grantee or secured party under any Leasehold Mortgage.

(aa) Lessee's Estate or Leasehold Estate: During the Term of this Lease, Lessee's leasehold interest in the Land and Lessee's fee ownership interest in the Improvements.

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- (bb) Lessor's Estate: Lessor's fee estate in the Land and reversionary interest in the Improvements pursuant to this Lease.
- (cc) Loan Documents. All documents executed by Lessee evidencing or securing a Leasehold Mortgage.
- (dd) Management Agent: 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 MidPen Property Management Corporation.
- (ee) Net Condemnation Award: 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.
- (ff) Partnership: The limited partnership that is the Lessee.
- (gg) Party: Lessor or Lessee, as applicable. Lessor and Lessee shall be referred to collectively as the "Parties."
- (hh) Permitted Encumbrances: Permitted title encumbrances as defined in Section 9.1(a).
- (ii) Person: An individual, partnership, corporation, public benefit corporation, trust, unincorporated association, or other entity or association.
- (jj) Plans and Specifications: Those plans and specifications approved by the Lessor, for the construction of the Improvements, as they may be amended from time to time and as approved by Lessor.
- (kk) Project: The Improvements as defined above.
- (ll) Rent: As described in Section 4.1 hereof.
- (mm) Resident Sublease: Any sublease or license agreement entered into by Lessee with residents of the residential units to be developed on the Land.
- (nn) Taking: 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.

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(oo) Tax Credit Eligible Household: A household that is eligible to rent and occupy a qualified low income dwelling unit under Section 42 of the Internal Revenue Code and applicable TCAC and State of California Legal Requirements relating to low income housing tax credits including but not limited to California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4, and 23610.5 and California Health and Safety Code Section 50199, *et seq.*

(pp) Tax Credit Restrictive Covenant: The agreement with TCAC to be executed by Lessee and properly recorded against the Lessee's Estate in the land records of the County, setting forth certain terms and conditions under which eighty-one (81) of the residential units in the Improvements will be operated

(qq) TCAC: means the California Tax Credit Allocation Committee.

(rr) Tenant(s): Any subtenant, sublessee or licensee of Lessee under any Resident Sublease(s).

(ss) Term: The period of time described in Section 2.2 hereof.

(tt) Transfer: 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: Scope of Development
 Exhibit E: 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. This Lease, the interests of Lessor and Lessee hereunder, and the Leased Premises, are in all respects subject to and bound by all of the covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record prior to the date of this Lease. Lessee hereby accepts the Leased Premises and acknowledges that the Leased Premises is in the condition required by the DDLA and 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 ninety-ninth (99th) anniversary of the Commencement Date.

EXHIBIT D

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 2 hereof. Further, Lessee agrees:

- (a) that all uses conducted on the Leased Premises, including, without limitation, all activities undertaken by Lessee pursuant to this Lease, shall conform to all applicable provisions of the Union City Municipal Code, the DDLA and the Regulatory Agreement;
- (b) not to use the Leased Premises for any disorderly or unlawful purpose;
- (c) to use its best efforts to prevent any Tenant from committing or maintaining any nuisance or unlawful conduct on or about the Leased Premises;
- (d) to use its best 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;
- (e) 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
- (f) 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.

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 Community Space Sublease. Lessee shall sublease to Lessor, and Lessor shall sublease from Lessee, approximately 6,000 square feet of office and administrative space within the Development, together with nine (9) reserved parking spaces (the "**Community Space Sublease Premises**"), upon completion of the Development (the "**Community Space Sublease**"). The form of the Community Space Sublease shall be substantially in the form of Exhibit J to the DDLA.

ARTICLE 3.
THE IMPROVEMENTS

EXHIBIT D

Section 3.1 Construction. Lessee shall cause the Improvements to be constructed in substantial compliance with the Construction Plans (as defined in the DDLA) 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 thirty (30) 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, skillful and professional manner, in compliance with all applicable Legal Requirements and in accordance with all of the requirements of the DDLA. Except as may be specified in the DDLA 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.

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. Prior to entering into an Approved Loan, Lessee shall submit a copy of proposed loan documents to Lessor and shall obtain written confirmation from Lessor that the Approved Loan is in conformance with the Financing Plan then in effect. Lessee shall have the right to enter into utility easements and other customary easements necessary and incidental to the development, construction and operation of the Improvements, which such easements shall not require the Lessor's consent if not required by the utility provider.

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) 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

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Leased Premises against foreclosure. In addition to any other indemnities provided in this Lease or the DDLA, 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 Development, 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.

Notwithstanding any other provision of this Lease, including, but not limited to, this Section 3.2, Lessor acknowledges and agrees to recordation of the TCAC lease rider, in a form required by TCAC, against Lessor's Estate.

Lessor's fee interest in the Land shall be senior to, and not be subordinated to, any financing obtained by Lessee in connection with the Leased Premises.

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, including but not limited to a public access easement for the street frontage along Mission Boulevard for pedestrian access that will be recorded substantially concurrently with the execution of this Lease. 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.

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(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 (as the Term may be extended by the Parties as provided herein) 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. At such time, Lessee shall peaceably and quietly leave and surrender the Leased Premises and the Improvements to Lessor in good order, condition, and repair, reasonable wear and tear and obsolescence excepted. Lessee shall leave in place and in good order, condition, and repair, all fixtures and machinery; except Lessee shall have the right to remove only Lessee-owned appliances, other unattached equipment, furniture and merchandise that Lessee shall have installed, which removal must be done without damage to the Leased Premises or Improvements. 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 and/or the Leased Premises 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.

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Section 3.6 No Abandonment. Lessee shall not abandon or vacate the Leased Premises or the Improvements at any time during the Term. If Lessee shall abandon, vacate, or otherwise surrender the Leased Premises or the Improvements, or be dispossessed thereof by process of law or otherwise, the same shall constitute a default under this Lease on the part of Lessee and, in addition to any other remedy available on the part of Lessor, any of Lessee's property left in, upon or about the Leased Premises or the Improvements (except for underground storage tanks) shall, at Lessor's option, be deemed to be abandoned and shall become the property of Lessor. The appointment of a receiver pursuant to a Lender's exercise of its rights under a Leasehold Mortgage, or the foreclosure of a Leasehold Mortgage, shall not be a default under this Section.

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.

At such time as the Development is no longer subject to the Tax Credit Restrictive Covenant or any other covenants restricting occupancy or rents in the Development other than the Lessor's Regulatory Agreement, the Rent due under this Lease shall be reset based on the fair market value of the remaining leasehold interest under this Lease (taking into account the restrictions contained in this Lease and the Lessor's Regulatory Agreement, hereinafter referred to as the "Recorded Restrictions") as independently appraised as determined by a qualified, independent appraiser (conducted by a certified appraiser reasonably acceptable to Lessor and Lessee). Such independent appraisal(s) shall determine the fair market value of the Development (but taking the Recorded Restrictions into account) at the time of such appraisal.

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. Lessee may pay all Rent due at the rate set forth in Section 4.1 for the entire Term of this Lease in advance.

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

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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 Possessory Interest Taxes. In accordance with California Revenue and Taxation Code Section 107.6(a), Lessor notices Lessee that by entering into this Lease, a possessory interest subject to assessment and collection of property taxes may be created. Lessee or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. If possessory interest taxes are assessed, Lessee agrees it is responsible for payment thereof and Lessor has no obligation or liability of any kind or nature relating to payment of property taxes. Lessee shall, at its sole cost and expense, seek exemption from, or contest the payment of, assessments and the collection of property taxes pursuant to Revenue and Taxation Code Section 214, or a successor statute. During the pendency of such contest or request, Lessee's non-payment of assessments or taxes when due shall not constitute a default hereunder if (i) the validity of such assessments and taxes is actively contested in good faith and by appropriate proceedings, (ii) Lessee has demonstrated to Lessor's reasonable satisfaction that leaving such assessments or taxes unpaid pending the outcome of such proceedings could not result in conveyance of the Leased Premises in satisfaction of such assessments or taxes or otherwise impair Lessor's estate in the Leased Premises, (iii) Lessee has furnished Lessor with a bond or other security satisfactory to Lessor in an amount not less than 100% of the applicable claim (including interest and penalties) and (iv) upon the final disposition of such proceedings, Lessee shall promptly pay all taxes and assessments then due, inclusive of any unpaid accrued penalties and interest. Lessor is a public agency and no property taxes will be or are legally assessable against its fee interest.

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 out-of-pocket costs or 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.

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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 5.5 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, 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 Resident Sublease. 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 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 One Million Dollars (\$1,000,000) 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, 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) Workers' Compensation Insurance. Lessee shall carry or cause to be carried workers' compensation insurance covering all persons employed in connection with the Leased Premises 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 and any contractor that has contracted for the performance of work on the Land 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.

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(c) Builders' Risk Insurance. Upon commencement of construction and continuing until issuance of a temporary 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 obtain or cause its contractor to obtain 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.

(d) Property Insurance. During the Lease Term, Lessee shall keep in full force and effect a policy or policies of insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in Alameda County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquakes to the extent generally and commercially available at commercially reasonable rates, if such insurance is generally obtained for affordable multifamily housing projects in Alameda County. Lessor shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

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 approved 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 policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payee.

(e) If any insurance policy or coverage required hereunder is canceled or reduced, Lessee shall, within thirty (30) 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

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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 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. 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.

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.

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Section 6.4 Limitation of Liability.

(a) In addition to any other indemnities provided in this Lease or the DDLA, 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 (i) any breach of Lessee's representations and warranties or Lessor's obligations under this Lease, or (ii) the operation of the Leased Premises, except to the extent any such Claim arises from the active negligence or willful misconduct of Lessor or the Indemnitees.

(b) In addition to any other indemnities provided in this Lease or the DDLA, 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 breach of Lessor's representations and warranties or Lessor's obligations under this Lease, except to the extent any such Claim arises from the active 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. 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, free of debris, waste, and graffiti, in compliance with the terms of all applicable provisions of the Union City Municipal Code, and in accordance with the standard of maintenance of high quality apartment projects within the East Bay Area region. To accomplish the maintenance, Lessee shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Lease. All such maintenance and repair shall conform to and comply with all Legal Requirements affecting the Leased Premises. Lessee agrees that, except as provided in the Community Space Sublease, Lessor shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Improvements and the Leased Premises. Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of Lessor as may be provided for in Section 1941 and 1942 of the California Civil Code, if applicable.

Section 7.2 Landscaping Maintenance.

(a) 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

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plantings and irrigation systems which have been installed, or are proposed to be installed, pursuant to the City-approved landscaped plan for the Project. 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.

(b) If, in the reasonable judgment of the Lessor, 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.

(c) 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 Lessor, 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 to the prior approval of the Lessor, which approval shall not be unreasonably withheld, 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, skillful and professional manner and in compliance with all applicable Legal Requirements and all applicable Insurance Requirements.

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(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 shall require Lessor's advance written consent.

Section 7.4 Indemnifications. Except with respect to the indemnifications concerning Hazardous Materials which are addressed in Section 9.3 of this Lease, 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, to the extent 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 active negligence or willful misconduct of the Indemnitees. In addition and subject to the limitations set forth herein, 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 to the extent such claim results from the acts of negligence alleged against Lessee. The provisions of this Section shall survive the expiration or termination of this Lease.

Section 7.5 Capital Replacement Reserve Account. Lessee shall establish and maintain a capital reserve account at all times during the Term of this Lease (“**Capital Reserve Account**”). The funds to be placed and maintained in the Capital Reserve Account shall be not less than _____. The funds in the Capital Reserve Account shall be expended only for capital repairs, improvements, and replacements to the Development fixtures and equipment with a long useful life and which are normally capitalized under generally accepted accounting principles. Capital repairs to and replacement of the Development shall include, without limitation, the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; sewer line replacement; water line replacement; gas line pipe replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area repainting. The non-availability of funds in the Capital Reserve Account does not in any manner relieve or lessen Lessee’s obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Development in the manner prescribed herein. Not less than once per year, Lessee shall submit to Lessor an accounting for the Capital Reserve Account. Notwithstanding the above, Lessee's compliance with any Capital Reserve Account requirements of Lenders, including but not limited to the County, or Investors shall be deemed compliance with the requirements of this Section.

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Section 7.6 Operating Reserve Account. Commencing upon the issuance of the Certificate of Occupancy for the Development, Lessee shall establish an operating reserve account (the “**Operating Reserve Account**”). The funds to be placed and maintained in the Operating Reserve Account shall be not less than _____. The Operating Reserve Account shall be used to cover shortfalls between annual Development revenue and actual operating expenses, but shall in no event be used to pay for capital items or capital costs properly payable from the Capital Reserve Account. Lessee shall, not less than once per year, submit to Lessor an accounting for the Operating Reserve Account. Notwithstanding the above, Lessee's compliance with any Operating Reserve Account requirements of Lenders, including but not limited to the County, or Investors shall be deemed compliance with the requirements of this Section.

ARTICLE 8.
MORTGAGE LOANS

Section 8.1 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 DDLA and executed attachments thereto.

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

(1) Lessor shall not agree to any mutual termination or accept any surrender of this Lease, nor shall Lessor consent to any material amendment or modification of this Lease without the prior written consent of the Lenders that have outstanding Approved Loans, if and to the extent required by any such Lenders. 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 8.1.

(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. Each Lender shall have sixty (60) days after receipt of notice from Lessor describing such default to cure the default, which notice 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 the default is not susceptible to cure within such period, the Lender

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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 (the "Initial Cure Period"). 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 Initial Cure Period, 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 Initial Cure Period 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 first sixty (60) days of the Initial Cure Period 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 Initial Cure Period, 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.

(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 subsection (1) of this Section 8.1(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 of default which Lessor may deliver to Lessee pursuant to this Lease. 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 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

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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 8.1(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, provided that any assignee: (A) shall take the Leasehold Estate subject to all of the provisions of this Lease or such new lease, (B) shall assume and agree to perform all obligations of Lessee under this Lease; and (C) 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, (B) Lessor terminates this Lease by reason of any Event of Default (as defined herein) or if (C) this Lease shall otherwise terminate, 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, if such Nominee 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.

(10) If a Lender 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 Lender takes a mortgage or deed of trust encumbering such leasehold interest to secure all or any portion of the purchase price given to the Lender 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 to paragraph (9) of this Section 8.1(a).

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(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 clause (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 8.1(a) of this Lease and any reference to a Lender in paragraphs 2), (3) and (7) of this Section 8.1(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.

Section 8.2 Cost of Approved Loans to be Paid by Lessee. 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 8.3 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 8.4 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 of the County of Alameda 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

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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 8.5 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.

Section 8.6 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 which has priority over this Lease; 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 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 lease the Leased Premises;
- (b) Lessor has received no written notice and has no actual knowledge of any litigation or action, pending or threatened, materially and adversely affecting the Leased Premises;
- (c) Lessor has received no written notice and has no actual knowledge of any pending or threatened Taking relating to all or any part of the Leased Premises;
- (d) 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;
- (e) 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;
- (f) 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;

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(g) Lessor has received no written notice and has no actual knowledge of any violations of any Legal Requirements affecting any portion of the Leased Premises that materially affect the development of the Improvements;

(h) 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 Lessor, its agents or employees have not ever been informed of any threatened or proposed serving of any such notice of violation or corrective work order;

(i) Except for any representations and warranties specifically with respect to the condition of the Land or Leased Premises set forth in this Agreement, Lessor makes no representation or warranty with respect to the condition of the Land or the Leased Premises or their fitness or availability for any particular use.

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;

(c) Litigation. Lessee has received no written notice and has no actual knowledge of any litigation or action, pending or threatened, materially and adversely affecting Lessee's ability to carry out its obligations hereunder; and

(d) Bankruptcy. Lessee is not the subject of a pending or threatened bankruptcy proceeding.

Section 9.3 Hazardous Materials. Lessee shall not knowingly permit the Land or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Leased Premises except: (a) as may be authorized by an agency of applicable jurisdiction, (b) for cleaning supplies and other materials in volumes and concentrations customarily used in construction, rehabilitation, use or maintenance of residential properties similar in nature to the Leased Premises and any commercial uses developed as part of the Development, and used, stored and disposed of in compliance with Environmental Laws; and (c) as may otherwise be allowed under Environmental Laws. For avoidance of ambiguity only, nothing in the previous sentence shall limit the Lessee from maintaining Hazardous Materials existing on

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the Leased Premises prior to the Commencement Date or consolidating such Hazardous Materials on the Leased Premises, all to the extent permitted by law.

Lessee shall take commercially reasonable action to prevent the release of any Hazardous Materials into the environment from the Leased Premises. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Lessee shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards generally applied by apartment complexes in Alameda County, California, as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials.

Notwithstanding the obligation of Lessee to indemnify Lessor and its officers, officials, members, employees, agents, and representatives pursuant to this section, and provided no Hazardous Materials exist on the Leased Premises as a result of Lessor's action, Lessee shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state, regional, or local governmental agency or political subdivision or any Environmental Laws and (ii) all actions necessary to make full economic use of the Leased Premises for the purposes contemplated by the Regulatory Agreement, the DDLA and this Lease, which requirements or necessity arise from the presence upon, about, or beneath the Leased Premises, of any Hazardous Materials. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Leased Premises, the preparation of any feasibility studies or reports, and the performance of any cleanup, remedial, removal, or restoration work.

In the event of a release of any Hazardous Materials into the environment, Lessee shall, as soon as possible after it becomes aware of the release, furnish to the Lessor a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Lessor, Lessee shall furnish to the Lessor a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Leased Premises including, but not limited to, all permit applications, permits, and reports, including, without limitation, those reports and other matters which may be characterized as confidential.

Section 9.4 Hazardous Materials Indemnification. From and after the Commencement Date, to the greatest extent allowed by law, Lessee shall indemnify, defend (with counsel reasonably approved by Lessor) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Material on, under, in or about the Leased Premises, or the transportation of any such Hazardous Material to or from, the Leased Premises occurring after the Commencement Date, or (ii) the failure of Lessee, Lessee'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 related to the Leased Premises, unless caused by the Lessor's active or passive negligence. The foregoing indemnity shall further apply to any residual Hazardous Materials in, on, under or about the Land or affecting any 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, but only to the extent that such release of Hazardous Materials occurs after the Commencement Date. The provisions of this Section shall survive the expiration or termination of this Lease.

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Lessee's indemnity obligations under this paragraph shall not apply to (a) any release of Hazardous Materials or Claim related to Hazardous Material that occurred or first accrued before the Lessee's possession of the Land whether known or unknown, and (b) claims arising out of the Lessor's failure to disclose any known condition that the Lessor is required to give to the Lessee. Lessor agrees to defend, indemnify, protect and hold harmless the Lessee, and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("**Lessee Indemnities**") from, regarding and against any and all liabilities, obligations (including but not limited to the duty to respond to any governmental inquiry, investigation, claim or demand regarding such Hazardous Materials), orders, decrees, judgments, liens, demands, actions, environmental response actions, claims, losses, damages, fines, penalties, expenses, environmental response costs or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting from or in connection with (i) the release, use, generation, discharge, storage or disposal of any Hazardous Material on, under, in or about the Land, or the transportation of any such Hazardous Material to or from, the Land occurring during the Lessor's ownership of the Land and prior to the Commencement Date, or (ii) the failure of Lessor, Lessor'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 in whole or in part by the negligence of Lessee or any of the Lessee Indemnitees in accordance with the principles of comparative negligence ("**Lessee's Indemnification**"). If the Lessor discovers Hazardous Materials or other materials subject to legal requirements or corrective action, the Lessor shall immediately notify the Lessee of the same.

Section 9.5 Prevailing Wage Requirements.

(a) The Lessee shall and shall cause its contractors and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations (the "**DIR**"), to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., 1810-1815 and implementing regulations of the DIR.

(b) All calls for bids, bidding materials and the construction contract documents for the construction of the Improvements must specify that:

(1) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the construction of the Improvements unless registered with the DIR pursuant to Labor Code Section 1725.5.

(2) The Development is subject to compliance monitoring and enforcement by the DIR.

(c) The Lessee, as the "awarding body", shall register the construction of the Improvements as required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days after entering into the construction contract and provide evidence

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of such registration to the Lessor within two (2) days of such registration and any additional registration reporting to the DIR.

(d) In accordance with Labor Code Sections 1725.5 and 1771.1, The Lessee shall require that its contractors and subcontractors be registered with the DIR, and maintain such registration as required by the DIR.

(e) Pursuant to Labor Code Section 1771.4, the construction of the Improvements is subject to compliance monitoring and enforcement by the DIR. The Lessee shall and shall require its contractors and subcontractors to submit payroll and other records electronically to the DIR pursuant to Labor Code Sections 1771.4 and 1776 et seq., or in such other format as required by the DIR.

(f) The Lessee shall and shall cause its contractors and subcontractors to keep and retain such records as are necessary to determine if prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of the Lessor provide to the Lessor such records and other documentation reasonably requested by the Lessor.

(g) The Lessee shall and shall cause its respective contractors and subcontractors to comply with all other applicable provisions of Labor Code, including without limitation, Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and implementing regulations of the DIR in connection with construction of the Improvements or any other work undertaken or in connection with the Land and the Leased Premises.

(h) Copies of the currently applicable current per diem prevailing wages are available from the DIR website, www.dir.ca.gov. The Lessee shall cause its respective contractors to post the applicable prevailing rates of per diem wages at the Development site and to post job site notices, in compliance with Title 8 California Code of Regulations 16451(d) or as otherwise as required by the DIR.

Section 9.6 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, 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. 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.

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Section 9.7 Affordability and Use Restrictions. Lessee hereby covenants and agrees that the Leased Premises shall be used solely for the operation of a multifamily rental housing development, Community Space, and any other uses permitted by and in compliance with the requirements set forth in that certain Regulatory Agreement and Declaration of Restrictive Covenants recorded against the Lessee's Estate.

Section 9.8 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 Leased Premises 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 Leased Premises or part thereof. Lessee shall include such similar provision in all leases and rental agreements affecting the Leased Premises or part thereof, and shall enforce the same diligently and in good faith.

Section 9.9 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 9.10 Management Entity. Lessor approves MidPen Property Management Corporation 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 or delayed, provided, however, the Lessor's approval shall not be required for the renewal of any management agreement provided that the property manager does not change. 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.

Section 9.11 Subleases. All Resident Subleases shall be in compliance with the applicable regulations of the California Tax Credit Allocation Committee and the applicable requirements of the Tax Credit Regulatory Agreement, and shall be subject to the following

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provisions and restrictions: Each Resident Sublease shall contain a provision, satisfactory to Lessor, requiring the Subtenant to attorn to Lessor upon (a) an Event of Default by Lessee under this Lease, and (b) receipt by such Subtenant of written notice of such Event of Default and instructions to make such Subtenant's rental payments to Lessor. On any termination of this Lease prior to the expiration of the Term, all of Lessee's interest as sublessor under any and all existing valid and enforceable Resident Subleases for which Lessor has issued a non-disturbance agreement shall be deemed automatically assigned, transferred, and conveyed to Lessor and subtenants under such Resident Subleases shall be deemed to have attorned to Lessor. Lessor shall thereafter be bound on such Resident Subleases to the same extent Lessee, as sublessor, was bound thereunder and Lessor shall have all the rights under such Resident Subleases that Lessee, as sublessor, had under such Resident Subleases; provided, however, that any amendments to any such Resident Sublease made after the issuance of a non-disturbance agreement to a subtenant shall not be binding on Lessor. Each Resident Sublease shall expressly provide that it is subject to each and all of the covenants, conditions, restrictions, and provisions of this Lease.

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 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 a 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 a 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 in contemplated in Section 10.2 above, Lessee shall be entitled to recover the costs and expenses

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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:

Section 10.5 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. Any "bonus value" attributable to this Lease shall be paid to Lessor.

(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) 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.

Section 10.6 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) 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. Any "bonus value" attributable to this Lease shall be paid to Lessor.

(e) 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).

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Section 10.7 Joinder. If a Leasehold Mortgage exists, the Lenders, to the extent permitted by law, shall be made a party to any Taking proceeding.

Section 10.8 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 the DDLA 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 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 material 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, 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 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

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(b) subject to the rights 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 and complete the curing of such default with due diligence and in good faith continue to cure the default until completion, but in no event shall the cure be completed more 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 fifteen (15) 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

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Lessee's failure to cure such default within thirty (30) 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) Lessee abandons, vacates, or otherwise surrenders the Leased Premises or the Improvements, or is dispossessed (other than dispossession as the result of a Taking subject to Section 10 hereof by process of law or otherwise;

(f) A Transfer occurs, either voluntarily or involuntarily, in violation of this Lease;

(g) 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 sixty (60) days;

(h) Lessee shall have voluntarily or involuntarily 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;

(i) Lessee defaults under any Loan Document and such default remains uncured beyond the expiration of all applicable cure periods such that the beneficiary under such Loan Document has the right to pursue foreclosure;

(j) 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;

(k) 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;

(l) 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;

(m) 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;

(n) 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

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proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to Lessor if the failure of such representation or warranty is not cured within thirty (30) days after written notice of the default has been given to the Lessee.

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 Resident Subleases 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, (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 (a) to administer Lessee's interest in the Leasehold Estate, (b) to collect all funds available in connection with the operation of the Project, and (c) 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

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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 sixty (60) days and thereafter prosecutes and completes the cure of such default with due diligence and in good faith, but in no event shall the cure be completed more than one hundred twenty (120) days from the receipt of the notice of default.

(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

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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 thirty (30) 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.

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 Resident Subleases 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 City and all persons, including any assignee of Lessor, having an interest in (i) this Lease or Lessee's Estate created hereunder, and

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(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);

(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 MidPen Housing Corporation, a California nonprofit public benefit corporation, 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 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 the same or substantially similar experience, assets and access to capital and private funding as Developer (as defined in the DDLA) did as of the Commencement Date; 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.

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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; acts of terrorism, insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God, acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement), unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other Parties; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance of the City); or other causes beyond the control or without the fault of the Party claiming an extension of time to perform ("**Force Majeure**"). 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 fifteen (15) days of knowledge of the commencement of the cause. If no written notice is sent within fifteen (15) 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 and the DDLA and executed attachments thereto contain the sole and entire understanding between the parties with respect to the leasing of the Leased Premises. 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).

EXHIBIT D

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. Each Party represents and warrants to the other Party that by proper action the person executing this Lease on behalf of such Party has been duly authorized to execute and deliver this Lease.

Section 17.10 Lease Administration and Approvals. The City Manager of the City of Union City, 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 Union City 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

EXHIBIT D

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 or by electronic mail ("email"), 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, provided, however, if any notice is given by email, such notice shall not be deemed delivered or given until a copy of such notice is either deposited in the mail or with a reputable commercial delivery service. 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 Union City
34009 Alvarado-Niles Road
Union City, CA 94587
Attention: City Manager

With copies to: City Attorney

To Lessee: MP Lazuli Landing Associates, LP
c/o MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attention: Jan Lindenthal, Chief Real Estate Development
Officer

With copies to Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attention: Karen Tiedemann

EXHIBIT D

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.

Section 17.22 No Personal Liability. Notwithstanding anything contained in this Lease to the contrary, the obligations of Lessor under this Lease (including any actual or alleged breach or default by Lessor) do not constitute personal obligations of the individual officers or employees of Lessor, and Lessee shall not seek recourse against the individual officers or employees of Landlord, or against any of their personal assets for satisfaction of any liability with respect to this Lease.

SIGNATURES ON FOLLOWING PAGE

EXHIBIT D

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 Union City, a California municipal corporation

By: _____

Its: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

LESSEE:

MP Lazuli Landing Associates, a California limited partnership

By: MP Lazuli Landing LLC, a California limited liability company

By: Mid-Peninsula Hermanas, Inc., a California nonprofit public benefit corporation

, By: _____
Its: _____

EXHIBIT D

EXHIBIT A

Legal Description of Leased Premises

EXHIBIT D

EXHIBIT B

**Site Plan of Leased Premises
(Attached)**

EXHIBIT D

EXHIBIT C

Form of Memorandum of Lease

RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:

WHEN RECORDED RETURN TO:

Attention: _____

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**MEMORANDUM OF GROUND LEASE
(Lazuli Landing Project)**

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is entered into as of _____, 20__, by and between the City of Union City, a California municipal corporation (the "**Lessor**") and MP Lazuli Landing Associates, L.P., a California limited partnership (the "**Lessee**"), with respect to that certain Ground Lease dated _____, 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 "**Leased Premises**"). The Lease shall commence on _____, 20__, and shall remain in effect for the ninety-nine (99) 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 Leased Premises.
4. This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

EXHIBIT D

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]

EXHIBIT D

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

LESSOR:

City of Union City, a California municipal corporation

By: _____

Its: _____

LESSEE:

MP Lazuli Landing Associates, a California limited partnership

By: MP Lazuli Landing LLC, a California limited liability company

By: Mid-Peninsula Hermanas, Inc., a California nonprofit public benefit corporation

, By: _____
Its: _____

[SIGNATURES MUST BE NOTARIZED]

EXHIBIT D

EXHIBIT D

SCOPE OF DEVELOPMENT

EXHIBIT E
FINANCING PLAN

Exhibit E - Preliminary Financing Plan

Preliminary Financing Plan Narrative

I. Construction Financing: **\$82,534,406**

1. Construction Loan: \$46,390,569
The loan term is proposed to be 25 months with 4% interest rate. The loan will be repaid from syndication proceeds and the permanent bank loan.
2. Alameda County A1 Regional Bond Allocation Funds: \$4,453,899 - Committed
The Regional and City Base Allocation are proposed to be available during construction and to roll over into permanent financing. The loan terms for Regional and City Base Allocation are currently proposed to be 0% interest, 55 years, and payments from prorata share of 75% of the residual receipts. The terms are subject to County's review and could be modified.
3. Alameda County A1 City Base Allocation Funds: \$8,787,121 - Committed
The City of Union City committed its City Base Allocation in the amount shown above.

The Regional and City Base Allocation are proposed to be available during construction and to roll over into permanent financing. The loan terms for Regional and City Base Allocation are currently proposed to be 0% interest, 55 years, payments from prorata share of 75% of the residual receipts. The terms are subject to County's review and could be modified.

4. City of Union City Funds for YFS and Centro de Servicios Office Development: \$1,800,000 – Committed
The City is committing a grant in the amount shown above to MidPen for the office development. MidPen Housing Corporation ("MidPen") is to loan the project the amount shown above. The loan terms are 0% interest, 55 years, with deferred payment.
5. State HCD – Infill Infrastructure Grant: \$5,034,216
MidPen is proposing to apply for the above referenced funds from State HCD. If awarded these funds, MidPen is to loan the project the amount referenced above. The proposed loan terms are 0% interest, 55 years, with deferred payment.
6. City of Union City Housing Funds: \$5,034,924 - Committed
The City of Union City committed funds in the amount shown above. The City loan is to be available during construction (with a portion available during predevelopment) and to roll into permanent financing. The loan terms are 0% interest, 55 years, with payments from pro rata share of residual receipts.
7. LP Equity (Tax Credit Investor Proceeds): \$2,969,191
This 4% tax credit project is expected to generate Limited Partner (LP) tax credit equity proceeds in the above amount at construction closing.
8. GP Equity (Tax Credit Source): \$8,064,486

As allowed by the California Tax Credit Allocation Committee, earned developer fee in excess of the developer fee cap must be contributed back to the project in the form of General Partner (GP) equity or deferred developer fee. This project is proposing to contribute in the form of GP equity.

II. Permanent Financing: **\$83,647,419**

1. Perm Loan: \$3,574,600
This perm loan will be serviced from net operating income. The proposed loan term is 15 years with a 35-year amortization and 4.53% interest rate.
2. Alameda County A1 Regional Bond Allocation Funds: \$4,453,899 - Committed
See above.
3. Alameda County A1 City Base Allocation Funds: \$8,787,121 - Committed
See above.
4. City of Union City Funds for YFS and Centro de Servicios Office Development:
\$1,800,000 – Committed
See above.
5. State HCD – Affordable Housing and Sustainable Communities: \$16,406,261
The project is proposing to apply for the above referenced funds from State HCD. The proposed loan terms are currently 0% simple interest, 55 years, and payments from prorata share of 75% of the residual receipts with other soft loan lenders. The terms are subject to State HCD's review and could be modified.
6. State HCD – Infill Infrastructure Grant: \$5,034,216
See above.
7. Federal Home Loan Bank San Francisco Affordable Housing Program (FHLBSF AHP):
\$800,000
The project is proposing to apply for the above referenced funds from AHP. The loan terms proposed are 0% interest, 55 years, with deferred payment.
8. City of Union City Housing Funds: \$5,034,924 - Committed
See above.
9. LP Equity (Tax Credit Investor Proceeds): \$29,691,913

This 4% tax credit project is expected to generate tax credit equity proceeds in the above amount at permanent conversion.
10. GP Equity (Tax Credit Source): \$8,064,486
See above.

IV. Partnership and Asset Management Fees:

A Partnership Management fee is a required fee paid to the limited partnership for overhead expenses associated with the administrative management and maintenance of the limited partnership. Administrative management includes staff time associated to complying with ongoing and required lender and investor reporting requirements. An Asset Management fee is a required fee paid to the equity investor committing tax credit equity to this project. This fee is paid to the equity investor for overhead expenses associated with tax credit reporting requirements.

The Partnership and Asset Management fees are \$18,000 and \$7,000 respectively with an escalator. Per the current Alameda County underwriting requirements, these fees are capped at \$25,000 total per year, with no escalator. However, the County can adopt new fee caps per State HCD limits and MidPen may request to increase these fees accordingly such that these fees are consistent with Alameda County underwriting requirements and industry standards. The Partnership and Asset Management Fees will be finalized and reflected in the Closing Financing Plan.

V. Developer Fee:

The total developer fee in tax credit eligible basis is \$10,064,386. Of this amount, \$2,000,000 will be paid upfront as construction milestones are achieved ("Upfront Developer Fee"). The remaining \$8,064,386 is proposed to be contributed to the project as GP Equity. In the event that any portion of the Upfront Developer Fee is deferred during the construction period, that portion will be repaid as a priority payment from net cash flow.

The Upfront Developer Fee is a one-time fee paid to MidPen in the amount of \$2,000,000, which will pay for overhead and staff time costs associated with developing the project. The Upfront Developer Fee amount will be in conformance with the fee limit imposed by the California Tax Credit Allocation Committee.

Lazuli Landing



Preliminary Financial Plan

PROJECT DATA

SITE, BUILDING AND UNIT DETAILS		
LAND		
Acreage	1.65	acres
Density	49.09	units/acre
# of Stories	4	
BUILDING		
Residential	72,081	sf
Misc. and Common	21,443	sf
Commercial	6,319	sf
Podium/Tuck-Under Garage	38,771	sf
PARKING		
# of residential spaces	112	
residential parking ratio	1.38	
total # parking spaces	121	
UNIT MIX AND AFFORDABILITY		
Unit Type	# Units	Average Rent
Studios/SRO	0	-
1-Bedroom	21	642
2-Bedroom	37	1,195
3-Bedroom	23	1,586
4-Bedroom	0	-
Total Unit Count	81	
Average Affordability	46.8%	

SOURCES AND USES		
CONSTRUCTION SOURCES		
		per unit
Construction Loan	\$ 46,390,569	572,723
Taxable Construction Loan	\$ -	-
Alameda County A1 Regional Bond Allocation	\$ 4,453,899	54,986
Alameda County A1 City Bond Allocation	\$ 8,787,121	108,483
City - Centro and Youth & Family Services Office Improvements	\$ 1,800,000	22,222
HCD - AHSC	\$ -	-
HCD - IIG	\$ 5,034,216	62,151
FHLBSF AHP	\$ -	-
City Housing Funds	\$ 5,034,924	62,160
Deferred Developer Fee	\$ -	-
LP Equity (Tax Credit Investor Proceeds)	\$ 2,969,191	36,657
GP Equity	\$ 8,064,486	99,562
total	\$ 82,534,406	\$ 1,018,943
PERMANENT SOURCES		
		per unit
Amortizing Perm Loan, Tranche A	\$ 3,574,600	44,131
Amortizing Perm Loan, Tranche B	\$ -	-
Alameda County A1 Regional Bond Allocation	\$ 4,453,899	54,986
Alameda County A1 City Bond Allocation	\$ 8,787,121	108,483
City - Centro and Youth & Family Services Office Improvements	\$ 1,800,000	22,222
HCD - AHSC	\$ 16,406,261	202,546
HCD - IIG	\$ 5,034,216	62,151
FHLBSF AHP	\$ 800,000	9,877
City Housing Funds	\$ 5,034,924	62,160
LP Equity (Tax Credit Investor Proceeds)	\$ 29,691,913	366,567
GP Equity	\$ 8,064,486	99,562
Deferred Developer Fee	\$ -	-
total	\$ 83,647,419	\$ 1,032,684

CASH FLOW - YEARS 1-5 and 15						
	2024	2025	2026	2027	2028	2038
Effective Gross Income	1,117,821	1,145,980	1,174,854	1,204,462	1,234,822	1,584,292
Operating Expenses	(567,243)	(587,097)	(607,645)	(628,912)	(650,924)	(918,193)
Services Expenses	(162,000)	(167,670)	(173,538)	(179,612)	(185,899)	(192,405)
Loan Admin Fees	(94,675)	(94,675)	(94,675)	(94,675)	(94,675)	(94,675)
Reserves	(40,500)	(40,500)	(40,500)	(40,500)	(40,500)	(40,500)
Net Operating Income	253,402	256,038	258,495	260,762	262,824	268,695
Debt Service Loan 1	(203,802)	(203,802)	(203,802)	(203,802)	(203,802)	(203,802)
Debt Service Loan 2	-	-	-	-	-	-
Debt Service Loan 3	-	-	-	-	-	-
Cash Flow	49,600	52,236	54,693	56,960	59,022	64,893
Asset Management Fee	7,000	7,245	7,499	7,761	8,033	11,331
Priority Deferred Developer Fee	0	0	0	0	0	-
Partnership Management Fee	18,000	18,630	19,282	19,957	20,655	29,137
Services Paid from Cash Flow	0	0	0	0	0	0
Residual Receipts to Lenders	18,450	19,770	20,934	21,931	22,750	18,319
Residual Receipts to Owner	6,150	6,590	6,978	7,310	7,583	6,106
Other						

PERMANENT USES				
ACQUISITION		total	per unit	per SF
Land	\$ 99	\$ 1	\$ 0	
Other Acquisition Costs	\$ 579,130	\$ 7,150	\$ 6	
Total Acquisition Costs		\$ 579,229	\$ 6	
HARD COSTS				
Resid. Site Work and Structures	\$ 40,233,831	\$ 496,714	\$ 409	
Commercial Costs	\$ 2,696,760	\$ 33,293	\$ 27	
Escalation Contingency	\$ 7,537,631	\$ 93,057	\$ 77	
Overhead & Profit/GC/Ins. Bond	\$ 6,855,834	\$ 84,640	\$ 70	
Owner Contingency	\$ 2,885,659	\$ 35,625	\$ 29	
Total Hard Costs		\$ 60,209,716	743,330	612
SOFT COSTS				
Architecture and Engineering	\$ 2,898,417	\$ 35,783	\$ 29	
Construction Loan interest and fees	\$ 3,740,513	\$ 46,179	\$ 38	
Permanent Financing	\$ 60,746	\$ 750	\$ 1	
Legal Fees	\$ 203,865	\$ 2,517	\$ 2	
Reserves	\$ 1,062,264	\$ 13,114	\$ 11	
Permits and Fees	\$ 3,878,867	\$ 47,887	\$ 39	
Other Soft Costs	\$ 949,417	\$ 11,721	\$ 10	
Relocation	\$ -	\$ -	\$ -	
Developer Fee	\$ 10,064,386	\$ 124,252	\$ 102	
Total Soft Costs		\$ 22,858,474	282,203	232
TOTAL DEVELOPMENT COSTS		\$ 83,647,419	\$ 1,032,684	\$ 850
TOTAL RESIDENTIAL COSTS IN TODAY'S DOLLARS (EXCLUDES COMMERCIAL, GP EQUITY, ESCALATION CONTINGENCY)		\$ 63,327,636	\$ 781,823	\$ 644
SURPLUS / (GAP)		\$ 0		

EXHIBIT F
 PROMISSORY NOTE
 (Lazuli Landing)

\$5,034,924

Union City, California
 _____, 20__

FOR VALUE RECEIVED, the undersigned MP Lazuli Landing Associates, LP, a California limited partnership ("Borrower"), hereby promises to pay to the order of the City of Union City, a California municipal corporation ("Holder"), 34009 Alvarado-Niles Road, Union City, California, 94587 Attn: City Manager, the principal amount of Five Million Thirty Four Thousand Nine Hundred Twenty Four Dollars (\$5,034,924), plus interest thereon pursuant to Section 2 below (the "City Loan").

1. Borrower's Obligation. This promissory note (the "Note") evidences Borrower's obligation to pay Holder the principal amount of up to Five Million Thirty Four Thousand Nine Hundred Twenty Four Dollars (\$5,034,924) with interest for the funds loaned to Borrower by Holder pursuant to the Disposition, Development and Loan Agreement between Borrower and Holder dated July 28, 2020 (the "DDLA"). The sources of funds for the City Loan are in-lieu fees received by the City pursuant to the City's inclusionary housing ordinance, funds from the low and moderate income housing asset fund of the Successor Agency to the Community Redevelopment Agency of the City of Union City, and proceeds of low and moderate income housing tax increment bonds issued by the Community Redevelopment Agency of the City of Union City in 2010. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

2. Interest. The City Loan bears interest from the date of this Note at zero percent (0%) interest, until full repayment of the outstanding balance of the City Loan.

3. Term and Repayment Requirements. Principal and interest under this Note in the amount of the City Prorata Percentage of Residual Receipts is due and payable as set forth in Section 4.6 of the DDLA. The unpaid principal balance hereunder, together with accrued interest thereon, is due and payable no later than the date that is the fifty-fifth (55th) anniversary of the date that a final certificate of occupancy is issued by the City of Union City to certify that the construction of the Development is complete and the Development may be legally occupied (the "Completion Date"), provided, however, if a record of the Completion Date cannot be located or established, the City Loan is due and payable on the fifty-seventh (57th) anniversary of the date of this Note. Notwithstanding the above, if the DDLA is terminated prior to the Closing, upon the assignment and delivery to Holder of the materials as provided in Section 4.6(e) of the DDLA, the portion of the City Loan disbursed as of that date shall be forgiven.

4. Disbursements. No more than Two Million Three Hundred Forty Five Thousand Dollars (\$2,345,000) of the City Loan shall be disbursed to the Borrower prior to the

EXHIBIT F

Closing as defined in the DDLA. All disbursements shall be in accordance with the terms of the DDLA.

5. Prepayment. Borrower may prepay the City Loan at any time without penalty or fee.

6. Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of Holder unless the assignment complies with Section 6.9 of the DDLA. Holder may assign its interest in the Note to any person or entity in Holder's sole discretion.

7. Security. Prior to the Closing as defined in the DDLA, this Note shall be unsecured. As of the Closing, this Note shall be secured by the Deed of Trust on the Borrower's leasehold interest in the Property, wherein Borrower is the trustor and Holder is the beneficiary. Upon recordation of the Deed of Trust, this Note will become nonrecourse to Borrower, pursuant to and except as provided in Section 4.8 of the DDLA, which Section 4.8 is hereby incorporated into this Note. The terms of the Deed of Trust are hereby incorporated into this Note and made a part hereof.

8. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to Holder at the address set forth in the first paragraph of this Note, or to such other place as Holder of this Note may from time to time designate.

(c) All payments on this Note shall be without expense to Holder, and Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of Borrower under this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that Holder may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

9. Default.

EXHIBIT F

(a) Any of the following shall constitute an event of default under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due following written notice by the Holder of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in Section 7.3 of the DDLA; and

(iii) The occurrence of any Borrower event of default under the DDLA, the Deed of Trust, the Regulatory Agreement, or other instrument securing the obligations of Borrower under this Note or under any other promissory notes hereafter issued by Borrower to Holder pursuant to the DDLA or the Deed of Trust (the "City Loan Documents"), subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of one or more of the foregoing events of default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of Holder become immediately due and payable upon written notice by Holder to Borrower without further demand.

(c) Holder's failure to exercise the remedy set forth in Subsection 9(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by Holder hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

(d) Notwithstanding anything herein to the contrary, Holder hereby agrees that any cure of any default made or tendered by one or more of Borrower's limited partners shall be deemed a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent hereunder to Borrower shall be sent to Borrower's limited partners at the address set forth in Section 9.1 of the DDLA.

10. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

EXHIBIT F

(b) Any extension of time for payment of this Note or any installment hereof made by agreement of Holder with any person now or hereafter liable for payment of this Note shall not operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

11. Miscellaneous Provisions.

(a) All notices to Holder or Borrower shall be given in the manner and at the addresses set forth in the DDLA, or to such addresses as Holder and Borrower may therein designate.

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the City Loan Documents, contains the entire agreement between the parties as to the City Loan. It may not be modified except upon written consent of the parties.

EXHIBIT F

IN WITNESS WHEREOF, Borrower is executing this Promissory Note as of the day and year first above written.

MP Lazuli Landing Associates, a California limited partnership

By: MP Lazuli Landing LLC, a California limited liability company

By: Mid-Peninsula Hermanas, Inc., a California nonprofit public benefit corporation

By: _____
, Its: - _____

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
Attn: City Manager

No fee for recording pursuant to
Government Code Section 27383 and 27388.1

A.P.N. _____

LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY
AGREEMENT, AND FIXTURE FILING
(Lazuli Landing)

THIS LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of
_____ by and among MP Lazuli Landing Associates, L.P. a California limited
partnership ("Trustor"), _____ Title Company, a California corporation ("Trustee"), and
the City of Union City, a California municipal corporation ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein
recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby
irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF
SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions
hereinafter set forth, Trustor's leasehold interest in the property located in the County of
Alameda, State of California, that is described in the attached Exhibit A, incorporated herein by
this reference, under and in connection with that certain Ground Lease dated as of
_____, between Beneficiary, as landlord, and Trustor, as tenant (as
modified from time to time, the "Ground Lease"), a memorandum of which shall record in the
Official Records of the County of Alameda, State of California ("Official Records"),
substantially concurrently herewith, pursuant to which Beneficiary ground leases the Land to the
Trustor (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which
Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith
or as a means of access thereto, including (without limiting the generality of the foregoing) all
tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and
description now or hereafter erected thereon, and all property of the Trustor now or hereafter
affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS (the "Secured Obligations"):

(a) Payment to Beneficiary of all sums at any time owing under or in connection with the Note (defined in Section 1.3 below) until paid or cancelled and any other amounts owing under the Loan Documents (defined in Section 1.2 below). Said principal and other payments shall be due and payable as provided in the Note or other Loan Documents, as applicable. The Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced;

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein;

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents; and

(d) All modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR
COVENANTS AND AGREES:

ARTICLE 1 DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

Section 1.1 The term "Loan Agreement" means that certain Disposition, Development and Loan Agreement between Trustor and Beneficiary, dated July 28, 2020, providing for the Beneficiary to loan to Trustor Five Million Thirty Four Thousand Nine Hundred Twenty Four Dollars (\$5,034,924).

Section 1.2 The term "Loan Documents" means this Deed of Trust, the Note, the Loan Agreement, the Regulatory Agreement, the Notice of Affordability Restriction on Transfer of Property, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.3 The term "Note" means the promissory note in the principal amount of Five Million Thirty Four Thousand Nine Hundred Twenty Four Dollars (\$5,034,924, of even date herewith, executed by Trustor in favor of the Beneficiary, as it may be amended or restated, the payment of which is secured by this Deed of Trust. (A copy of the Note is on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.)

Section 1.4 The term "Notice of Affordability Restriction on Transfer of Property" means the Notice of Affordability Restriction on Transfer of Property of even date herewith by and between the Beneficiary and the Trustor.

Section 1.5 The term "Principal" means the amount required to be paid under the Note.

Section 1.6 The term "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith by and between the Beneficiary and the Trustor.

ARTICLE 2 MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment and performance of the Secured Obligations, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition, reasonable wear and tear excepted. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the

Recorder of Alameda County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those otherwise required by law, and as approved, in writing, by Beneficiary.

Section 2.3 Assignment of Rents.

As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the Secured Obligations with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior

to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenant that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become part of the Secured Obligations pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure the Secured Obligations.

ARTICLE 3 TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become part of the Secured Obligations secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all Secured Obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to Trustor's satisfaction of the Secured Obligations.

Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become part of the Secured Obligations (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest

from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

ARTICLE 4
DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property (collectively, the "Funds") shall be used to repair or restore the Property, but if the property cannot be repaired or restored such Funds are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender. The Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that Trustor (taking into account the Funds) has sufficient funds to rebuild the improvements in substantially the form they existed prior to the casualty or condemnation.

ARTICLE 5
AGREEMENTS AFFECTING THE PROPERTY; FURTHER
ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property.

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined in Section 7.1) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the

Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the Secured Obligations, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 5.8 Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease,

sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it 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 Security. The foregoing covenants shall run with the land.

ARTICLE 6 HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions ("Environmental Laws") on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except (x) as permitted under Environmental Laws; (y) such of the foregoing as may be customarily used in construction or operation of a multi-family residential development; or (z) such of the foregoing as was present on the Property prior to the commencement of the Ground Lease.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); and (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims").

Beneficiary 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. Beneficiary shall have its reasonable attorneys' fees in connection therewith paid by Trustor, provided Trustor has failed, based on reasonable evidence produced by Beneficiary, to adequately defend such Hazardous Materials Claims. Trustor shall indemnify, defend, and hold harmless Beneficiary and its councilmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property arising from or related to the actions of Trustor, its employees, officers, contractors or agents, including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees and consultant's fees. This indemnification applies whether

or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties).

Without Beneficiary's prior written consent, which shall not be unreasonably delayed or withheld, Trustor shall not take any Environmental Measure or other remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgement, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

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 Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary 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 Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor 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 Trustor 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) attorneys' fees, incurred by the Beneficiary 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 Loan Agreement until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7 LEASEHOLD MORTGAGE PROVISIONS

Section 7.1 General

The provisions of this Article 7 shall apply in the event that, and so long as, any portion of the Property consists of Trustor's interests as tenant under any lease (including, without limitation, the Ground Lease). The lien of this Deed of Trust shall encumber all of Trustor's leasehold estate and other rights and interests under and in connection with the Ground Lease, including without limitation, renewal and extension rights, options to expand, and purchase options (all of which rights shall be collectively referred to herein as the "Leasehold").

Section 7.2 Performance of Obligations.

Trustor shall timely perform its obligations in connection with the Ground Lease. Trustor specifically acknowledges Beneficiary's right, while any default by Trustor under the Ground Lease remains uncured, to perform the defaulted obligations and take all other actions which Beneficiary reasonably deems necessary to protect its interests with respect thereto, and Trustor hereby irrevocably appoints Beneficiary its true and lawful attorney-in-fact in its name or otherwise to execute all documents, and perform all other acts, which Beneficiary reasonably deems necessary to preserve its or Trustor's rights with respect to the Leasehold.

Section 7.3 Notice under Ground Lease.

Trustor shall notify Beneficiary promptly in writing of (i) the occurrence of any default by any party under any Ground Lease and (ii) the receipt by Trustor of any notice claiming the occurrence of any default by Trustor under the Ground Lease or the occurrence of any event which, with the passage of time or the giving of notice or both, would constitute a default by Trustor under the Ground Lease (and Trustor shall also promptly deliver a copy of any such notice to Beneficiary).

Section 7.4 Subordination of Leasehold Interest.

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.

Section 7.5 Additional Events of Default.

In addition to all other Events of Default described in this Deed of Trust, the occurrence of any of the following shall be an Event of Default hereunder:

- (a) A material breach or default by Trustor under the Ground Lease, subject to any applicable cure period; or
- (b) The occurrence of any event or circumstance which gives either party under the Ground Lease a right to terminate such Ground Lease.

Section 7.6 Application of Bankruptcy Code.

As used in this Deed of Trust, the "Bankruptcy Code" shall mean 11 U.S.C. §§ 101 et seq., as modified and/or recodified from time to time. Notwithstanding anything to the contrary contained herein with respect to any Ground Lease:

(a) The lien of this Deed of Trust attaches to all of Trustor's rights under Subsection 365(h) of the Bankruptcy Code, including without limitation any and all elections to be made thereunder, any and all rights under the Ground Lease which Trustor is entitled to retain pursuant to 11 U.S.C. § 365(h)(1)(A)(ii) in the event of a rejection under the Bankruptcy Code of the Ground Lease by the landlord thereunder (or any trustee thereof), and any and all rights of offset under or as described in 11 U.S.C. § 365(h)(1)(B).

(b) Trustor acknowledges and agrees that, as the beneficiary under this Deed of Trust and by operation of 11 U.S.C. §365(h)(1)(D), Beneficiary has, and until this Deed of Trust has been fully reconveyed continuously shall have, whether before or after any default under any of the Secured Obligations or the taking of any action to enforce any of Beneficiary's rights and remedies under this Deed of Trust or any foreclosure sale hereunder, the complete, unfettered and exclusive right, in its sole and absolute discretion, to elect (the "365(h) Election") whether (i) the Ground Lease that has been rejected under the Bankruptcy Code by the landlord thereunder (or any trustee therefor) shall be treated as terminated under 11 U.S.C. §365(h)(1)(A)(i), or (ii) the rights under the Ground Lease that are in or appurtenant to the real property, as described in 11 U.S.C. §365(h)(1)(A)(ii), should be retained pursuant to that subsection. To the extent that, notwithstanding the preceding sentence and 11 U.S.C. §365(h)(1)(D), Trustor now or at any time in the future has any right to make, or to participate in or otherwise in any manner affect the making of, the 365(h) Election with respect to the Ground Lease, Trustor hereby absolutely assigns and conveys to Beneficiary any and all such rights, and all of Trustor's right, title, and interest therein, which may be used and exercised by Beneficiary completely, exclusively, and without any restriction whatsoever, in Beneficiary's sole and absolute discretion, whether before or after any default upon any of the Secured Obligations, the taking of any action to enforce any of Beneficiary's rights and remedies under this Deed of Trust, or any foreclosure sale hereunder. Trustor hereby unconditionally and irrevocably appoints Beneficiary as its attorney-in-fact to exercise Trustor's right, if any, to make, or

participate in or otherwise in any manner affect the making of, the 365(h) Election with respect to the Ground Lease. Trustor shall not in any manner impede or interfere with any action taken by Beneficiary and, at the request of Beneficiary, Trustor shall take or join in the taking of any action to make, or participate in or otherwise in any manner affect the making of, the 365(h) Election with respect to the Ground Lease, in such manner as Beneficiary determines in its sole and absolute discretion. Unless and until instructed to do so by Beneficiary (as determined by Beneficiary in its sole and absolute discretion), Trustor shall not take any action to make, or participate in or otherwise in any manner affect the making of, the 365(h) Election with respect to the Ground Lease, including in particular, but without limitation, any election to treat the Ground Lease as terminated. Beneficiary shall have no obligation whatsoever to Trustor or any other person or entity in connection with the making of the 365(h) Election with respect to the Ground Lease or any instruction by Beneficiary to Trustor given, withheld or delayed in respect thereof, nor shall Beneficiary have any liability to Trustor or any other person or entity arising from any of the same.

(c) As security for the Secured Obligations, Trustor hereby irrevocably assigns to Beneficiary all of Trustor's rights to damages arising from any rejection by the landlord (or any trustee thereof) of the Ground Lease under the Bankruptcy Code. Beneficiary and Trustor shall proceed jointly or in the name of Trustor in respect of any claim or proceeding relating to the rejection of the Ground Lease, including without limitation the right to file and prosecute any proofs of claim, complaints, motions and other documents in any case in respect of such landlord under the Bankruptcy Code. This assignment shall continue in effect until all of the Secured Obligations have been satisfied in full. Any amounts received by Beneficiary or Trustor as damages arising from the rejection of the Ground Lease as aforesaid shall be applied first to all costs reasonably incurred by Beneficiary (including attorneys' fees) in connection with this subsection (c) and then in accordance with other applicable provisions of this Deed of Trust.

(d) If, pursuant to the Bankruptcy Code, Trustor seeks to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance of the landlord's obligations after the rejection by the landlord (or any trustee thereof) of the Ground Lease, Trustor shall, prior to effecting such offset, notify Beneficiary in writing of its intent to do so, setting forth the amounts proposed to be offset and, in the event that Beneficiary objects, Trustor shall not effect any offset of the amounts to which Beneficiary objects. If Beneficiary fails to object within 10 days following receipt of such notice, Trustor may offset the amounts set forth in Trustor's notice.

(e) If any legal proceeding is commenced with respect to the Ground Lease in connection with any case under the Bankruptcy Code, Beneficiary and Trustor shall cooperatively conduct any such proceeding with counsel reasonably agreed upon between Trustor and Beneficiary. Trustor shall, upon demand, pay to Beneficiary all costs (including attorneys' fees) reasonably incurred by Beneficiary in connection with any such proceeding.

(f) Trustor shall immediately notify Beneficiary orally upon learning of any filing by or against any landlord under any Ground Lease of a petition under the Bankruptcy Code. Trustor shall thereafter promptly give written notice of such filing to Beneficiary, setting forth any information available to Trustor with respect to the date of such filing, the court in which such petition was filed, and the relief sought therein. Trustor shall promptly deliver to

Beneficiary all notices, pleadings and other documents received by Trustor in connection with any such proceeding.

Section 7.7 Additional Representations and Warranties.

Trustor hereby represents and warrants to Beneficiary, with respect to the Ground Lease, as follows:

- (a) The Ground Lease is in full force and effect;
- (b) Trustor owns the entire tenant's interest and Beneficiary owns the entire lessor's interest under the Ground Lease and each have the right under the Ground Lease to execute this Deed of Trust; and
- (c) No default under the Ground Lease remains uncured, nor has any event occurred which, with the passage of time or service of notice or both, would constitute such a default.

ARTICLE 8
EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default.

The following shall constitute events of default ("Events of Default") following the expiration of any applicable notice and cure periods: (1) failure to make any payment to be paid by Trustor under the Loan Documents; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination; (3) failure to make any payment or observe or perform any of Trustor's other covenants, agreements, or obligations under any other debt instrument or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein; or (4) a default is declared under the Approved Financing by the lender of such Approved Financing. Notwithstanding anything to the contrary contained herein, Beneficiary hereby agrees that any cure of any default made or tendered by one or more of Trustor's limited partners shall be deemed a cure by the Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor. Copies of all notices which are sent to Trustor hereunder shall be sent to Investor Limited Partner at the address set forth in the Loan Agreement.

Section 8.2 Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and all unpaid Secured Obligations shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 8.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Sale (as defined below) hereunder or invalidate any act done in response to such Event of Default or pursuant to such Notice of Sale, and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;
- (b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;
- (c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Sale"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Alameda County; or
- (d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing the Secured Obligations.

Section 8.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall deliver to the Trustee the Notice of Sale and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

- (a) Upon receipt of the Notice of Sale from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in the Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to

such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other Secured Obligations owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may 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, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 8.5 Receiver.

If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 8.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 8.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. Beneficiary's express or implied consent to breach, or waiver of, any obligation of the Trustor hereunder shall not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary

of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment or performance of any Secured Obligation, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 8.8 Suits to Protect the Security.

The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 8.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 8.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any Secured Obligations or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Amendments.

This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 9.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and all obligations under the Loan Documents have been performed in full, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 9.3 Notices.

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless (a) dispatched by registered or certified mail, postage prepaid, return receipt requested, (b) delivered by express delivery service, return receipt requested, (c) delivered personally, or (d) sent by electronic mail, provided that any notice sent by electronic mail must be followed by notice delivered under either (a), (b), or (c) within 2 business days. All such notices shall be delivered to the principal office of the Parties as follows:

Borrower: MP Lazuli Landing Associates, LP
c/o MidPen Housing Corporation
303 Vintage Park Dr., Suite 250
Foster City, CA 94404
Attn: Jan M. Lindenthal, Chief Real Estate Development Officer
email: _____

City: City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
Attn: City Manager
email: _____

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable) except that any electronic mail received after 5:00 p.m. shall be deemed to have been received on the next business day.

Section 9.4 Successors and Joint Trustors.

Where an obligation created herein is binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 9.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 9.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 9.7 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 9.8 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 9.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

Section 9.10 Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 9.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 9.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 9.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 9.14 Tax Credit Provisions.

Notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Security encumbered by this Deed of Trust, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986 (26 USC 42 (h)(6)(E)(ii)), as amended, shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by a Regulatory Agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

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

TRUSTOR:

MP Lazuli Landing Associates, a California limited partnership

By: MP Lazuli Landing LLC, a California limited liability company

By: Mid-Peninsula Hermanas, Inc., a California nonprofit public benefit corporation

, By: _____
Its: _____

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT H

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
Attn: City Manager

No fee for recording pursuant to
Government code Section 27383

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(Lazuli Landing)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of _____, by and between the City of Union City, a California municipal corporation (the "City"), and MP Lazuli Landing Associates, a California limited partnership (the "Owner").

RECITALS

A. Owner is the owner of a leasehold interest in that certain property bounded by Mission Boulevard, D Street, E Street and 2nd Street in the City of Union City, as more particularly described in Exhibit A (the "Property") pursuant to that certain Ground Lease dated as of _____ (as modified from time to time, the "Ground Lease"), a memorandum of which shall record in the Official Records of the County of Alameda, State of California ("Official Records"), substantially concurrently herewith. Owner intends to construct an eighty-one (81) unit multifamily rental housing development on the Property for rental to extremely low, very low and low income households including one (1) manager's unit that is not subject to affordability restrictions. Together the Property and its improvements are the "Development".

B. City has entered into a Disposition, Development and Loan Agreement with Owner dated July 28, 2020 ("DDLA") pursuant to which the City agreed to ground lease the Property to the Owner. The DDLA further provides for the City to loan to the Owner Five Million Thirty Four Thousand Nine Hundred Twenty Four Dollars (\$5,034,924) ("City Loan") to assist with the construction of the Development, and to grant to MidPen Housing Corporation, a California nonprofit public benefit corporation, One Million Eight Hundred Thousand Dollars (\$1,800,000) (the "City Grant") to be used by MidPen Housing Corporation to make a loan to Owner for the costs of construction and installation of tenant improvements to the "Community Space" to be constructed within the Development.

EXHIBIT H

C. The City acquired the Property, as the successor agency to the former Union City Redevelopment Agency. The Property was acquired by the former Redevelopment Agency with the proceeds of tax exempt tax allocation bonds.

D. The City has agreed to ground lease the Property to the Owner and to make the City Loan and the City Grant on the condition that the Owner construct, maintain and operate the Development in accordance with restrictions set forth in this Regulatory Agreement and in related documents including the DDLA. The "Community Space" to be constructed within the Development (as defined in the DDLA) is not intended to be regulated by this Regulatory Agreement.

E. The Owner applied for and received a density bonus pursuant to the State Density Bonus Law (Government Code Sections 65915-65918) ("Density Bonus Law"). The Density Bonus Law requires the City to ensure and the Owner to agree to continued affordability of the Units subject to the density bonus. This Agreement satisfies the requirements and obligations of the Density Bonus Law.

F. In consideration for ground lease of the Property and receipt of the City Loan and the City Grant at an interest rate substantially below the market rate, Owner agrees to observe all of the terms and conditions set forth below.

THEREFORE, City and Owner hereby agree as follows.

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" shall mean the actual number of persons in the applicable household.

(b) "Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

(c) "Affiliate" means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Owner which, if Owner is a partnership or limited liability company, shall include each of the constituent members or partners, respectively thereof. The term "control" as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

EXHIBIT H

(d) "Affordable Units" shall mean collectively the Twenty Percent Units and the Very Low Income Units.

(e) "Area Median Income" shall mean the median gross yearly income adjusted for Actual Household Size or Assumed Household Size as specified herein, in Alameda County, California, as published from time to time and periodically updated in Title 25, California Code of Regulations, Section 6932 (or successor provision) by HCD. In the event that such income determinations are no longer published or are not updated for a period of at least eighteen (18) months, City shall provide the Owner with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

(f) "Assumed Household Size" means the household size "adjusted for family size appropriate to the unit" in accordance with the California Tax Credit Allocation Committee rules and regulations.

(g) "City" shall mean the City of Union City, a California municipal corporation.

(h) "City Loan" shall mean all funds loaned to Owner pursuant to the DDLA.

(i) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the construction of the Development is complete and the Development may be legally occupied.

(j) "DDLA" shall mean the Disposition, Development and Loan Agreement entered into by and among the City and Owner and dated of July 28, 2020.

(k) "Deed of Trust" shall mean the Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith by and among Owner, as Trustor, _____ Title Company, as trustee, and the City as beneficiary, that encumbers Owner's leasehold interest in the Property to secure repayment of the City Loan and Owner's performance of the Loan Documents.

(l) "Density Bonus Units" shall mean the four (4) units that are restricted at affordable rents in compliance with the Density Bonus Law. The Density Bonus Units may be either Twenty Percent Units or Very Low Income Units.

(m) "Development" shall mean the Property and the eighty-one (81) units to be developed on the Property, and any additional improvements and all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist. For purposes of this Agreement, the Community Space is excluded from the definition of the Development.

(n) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(o) "Household Income" shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with the California Tax Credit Allocation Committee rules and regulations or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program

EXHIBIT H

exists, City shall provide the Owner with a reasonably similar method of calculation of gross income as provided in 25 California Code of Regulations Section 6914.

(p) "Investor Limited Partner" means _____.

(q) "Loan Documents" shall mean this Agreement, the DDLA, the Note, and the Deed of Trust.

(r) "Note" shall mean the promissory note from the Owner to City evidencing all or any part of the City Loan.

(s) "Owner" shall mean MP Lazuli Landing Associates, L.P., a California limited partnership, and its successors and assigns to the Development.

(t) "Partnership Agreement" means the Agreement of Limited Partnership, dated on or about _____ that governs the operation and organization of Owner, as a California limited partnership.

(u) "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein.

(v) "Rent" shall mean the total of monthly payments by the tenants of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant. Utility allowances may be determined by use of the utility allowance published by the local public housing authority or the California Utility Allowance Calculator ("CUAC") model allowed by the California Tax Credit Allocation Committee regulations, if the Property qualifies.

(w) "Tenant" shall mean a household occupying a Unit.

(x) "Term" means the term of this Regulatory Agreement, which commences as of the date of this Regulatory Agreement and shall remain in effect until the earlier of (1) the termination of the Ground Lease; or (2) the ninety ninth (99th) anniversary of the issuance of a Certificate of Occupancy for the Development.

(y) "Twenty Percent Household" shall mean a household with a Household Income which does not exceed twenty percent (20%) of Area Median Income.

(z) "Twenty Percent Units" shall mean the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Twenty Percent Households.

(aa) "Units" shall mean the eighty-one (81) rental units to be constructed by the Owner on the Property.

EXHIBIT H

(bb) "Very Low Income Household" shall mean a household with a Household Income that does not exceed fifty percent (50%) of Area Median Income.

(cc) "Very Low Income Units" shall mean the Units which, pursuant to Section 2.1(d) below, are required to be occupied by Very Low Income Households.

ARTICLE 2.
AFFORDABILITY COVENANTS

Section 2.1 Occupancy Requirements.

(a) Twenty Percent Units. Sixteen (16) of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Twenty Percent Households.

(b) Very Low Income Units. Twenty Three (23) of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

(c) Density Bonus Units. The four (4) Density Bonus Units may be either Twenty Percent Units or Very Low Income Units. For avoidance of doubt, the Density Bonus Units are not in addition to the Affordable Units but rather the Affordable Units satisfy the Density Bonus Unit requirement.

(d) Manager's Unit. One (1) Unit shall be reserved for an on-site manager and shall not be subject to affordability or occupancy restrictions.

(e) Intermingling of Units. All Units shall be intermingled and of comparable quality. Tenants in all Units shall have equal access to and enjoyment of all common facilities of the Development.

(f) Disabled Persons Occupancy.

(1) Owner shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) the United States Fair Housing Act, as amended, (iv) the Americans With Disabilities Act of 1990, and (v) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(2) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its city council, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Regulatory Agreement, repayment of the City Loan, cancellation of the Promissory Note, and the reconveyance of the Deed of Trust.

EXHIBIT H

Section 2.2 Allowable Rent.

(a) Twenty Percent Rents. Subject to the provisions of Section 2.3 below, the Rent charged to Tenants of the Twenty Percent Units, shall not exceed one-twelfth of thirty percent (30%) of twenty percent (20%) of Area Median Income, adjusted for Assumed Household Size.

(b) Very Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent charged to Tenants of the Very Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for Assumed Household Size.

(c) Compliance with TCAC Requirements. For all units other than the Density Bonus Units, during the term of any regulatory agreement associated with the provision of low income housing tax credits by the California Tax Credit Allocation Committee ("TCAC") and recorded against the Property (the "TCAC Regulatory Agreement"), Owner may use the occupancy standards, occupancy assumptions, income limits, and rent levels that are permitted by TCAC in the TCAC Regulatory Agreement, in place of such requirements imposed by this Regulatory Agreement.

(d) Compliance with Density Bonus Law. Occupancy standards, occupancy assumptions, income limits and rent levels for the Density Bonus Units shall comply with the requirements of the Density Bonus Law.

Section 2.3 Rent Increases.

(a) Rent Amount. The initial Rent for all Units must be approved by the City prior to occupancy. The City will provide Owner with a schedule of maximum permissible Rents for the Units and the maximum monthly allowances for utilities and services (excluding telephone) at least nine months before the expected date for receipt of a temporary certificate of occupancy and annually. The utility allowance schedule will be determined either by use of the CUAC or Housing Authority schedule. Notwithstanding the City schedule of maximum rents, Owner shall not be obligated to reduce rents for any existing tenants should maximum rents decrease, or utility allowances increase for any units other than the Density Bonus Units which must conform to the City schedule of maximum rents.

(b) Rent Increases. All Rent increases for all Units are subject to City approval. No later than sixty (60) days prior to the proposed implementation of any Rent increase affecting a Unit, Owner shall submit to the City a schedule of any proposed increase in the Rent charged for the Units. The Rent for such Units may be increased no more than once annually based upon updated rent schedules corresponding to the updated Area Median Income. The City will disapprove a Rent increase for the Density Bonus Units if it violates the schedule of maximum permissible Rents for the Units provided to Owner by the City. The City will disapprove a Rent Increase for all non-Density Bonus Units if the Rent is greater than (i) the schedule of maximum permissible Rents for Units provided to the Owner by the City; or (ii) the rent in effect immediately prior to any Rent increase, whichever is higher. Any rent increase resulting from use of the CUAC model for utility allowances shall comply with the California Tax Credit

EXHIBIT H

Allocation Committee limitation. Owner shall give Tenants written notice at least thirty (30) days prior to any Rent increase, following completion of the City approval process set forth above. Notwithstanding the above, in no event will any annual rent increase exceed the annual rent increase allowed pursuant to Civil Code Section 1947.12, although the parties acknowledge that the Units are not subject to such restrictions pursuant to Civil Code Section 1947.12. For purposes of this Agreement, if any rent subsidy is terminated or reduced, an increase in the tenant's total monthly payment toward rent to offset the terminated or reduced rent subsidy shall not constitute a Rent Increase as long as the Rent for the Unit is not increased above the maximum allowable Rent.

Section 2.4 Increased Income of Occupying Households.

(a) Increased Income Below Very Low Income.

In the event, upon recertification of an occupant household's income, the Owner discovers that a Twenty Percent Household no longer qualifies as a Twenty Percent Household (but does qualify as a Very Low Income Household), such household's Unit shall be considered a Very Low Income Unit (and the Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Area Median Income upon sixty (60) days written notice to the household) and the Owner shall rent the next available Unit to a Twenty Percent Household to comply with the requirements of Section 2.1 above.

(b) Non-Qualifying Household. If, upon recertification of a Tenant's income, the Owner determines that a Tenant has an Adjusted Income exceeding the qualifying income for Very Low Income Household, adjusted for Actual Household Size, such Tenant shall be permitted to continue to occupy the Unit at a Rent not exceeding one-twelfth of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income, and the Unit shall continue to be classified as a Very Low Income Unit until the Tenant vacates the Unit, at which time the Unit shall be re-rented to a Twenty Percent Household or a Very Low Income Household, as applicable, to meet the requirements of Section 2.1 above. Notwithstanding the above, if the Owner determines that a Tenant has an Adjusted Income exceeding One Hundred Twenty Percent (120%) of Area Median Income, the Owner may elect to increase the Rent to the maximum permissible.

(c) Termination of Occupancy. Upon termination of occupancy of a Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Twenty Percent Household or Very Low Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit (e.g., Twenty Percent Household or Very Low Income Unit) shall be redetermined.

(d) Continued Compliance. In the event an occupant household's income increases and the rent is increased as set forth in Sections (a) and (b) above, the Unit shall continue to be classified as a Twenty Percent Unit or a Very Low Income Unit, as applicable, until such time as the Unit is either vacated by the occupant or another Unit is rented at the applicable income limit.

EXHIBIT H

Section 2.5 Lease Provisions. Owner shall include in leases for all Units provisions which authorize Owner to immediately terminate the tenancy of any household one or more of whose members has misrepresented any fact material to the household's qualification as a Twenty Percent Unit or Very Low Income Household. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits for a Twenty Percent Unit or Very Low Income Household, as applicable, such household's Rent may be subject to increase.

Section 2.6 Condominium Conversion. The Owner shall not convert the Development or any Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement.

Section 2.7 Expiration of Regulatory Agreements. Notwithstanding the provisions of Sections 2.1 and 2.2, upon expiration of the fifty-five (55) year term of the TCAC Regulatory Agreement, the maximum household income of the Affordable Units and the corresponding Rent amounts for the Affordable Units may be increased to an amount necessary to make operation of the Development financially feasible (as defined below); provided all of the following conditions are met: (1) the maximum qualifying household income for any unit shall in no event be increased above 80% of Area Median Income adjusted for household size appropriate to the Unit, (2) the annual affordable rent for any Unit shall in no event exceed 30% of 60% of Area Median Income, as adjusted for household size appropriate to the Unit; (3) the City has approved any such rent increase based on a projected operating budget provided to the City by the Owner showing the need for the rent increase; (4) the rent increase is only applicable to the minimum number of Units and only in the amount necessary to ensure that the Development is financially feasible as shown on the operating budget submitted to the City; and (5) there shall be no displacement of existing occupants of the Units. For purposes of this section "financially feasible" shall mean that the Development generates sufficient revenue to pay all operating costs and required debt service. Prior to any such rent increase, Owner shall use diligent efforts to seek alternative funding sources that would maintain the financial feasibility of the Development at the Rents set forth in Section 2.2.

ARTICLE 3.

INCOME CERTIFICATION AND REPORTING

Section 3.1 Income Certification. The Owner shall obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Units (excluding the manager's Unit). The Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (6) if the

EXHIBIT H

applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of tenant income certifications shall be available to City upon request.

Section 3.2 Annual Report to City. Each year by July 1 Owner shall submit an annual report to City, in a form approved by City. The annual report shall include for each Unit covered by this Agreement, the Rent and the income and household size of the household occupying the Unit and shall have the income certifications for each Tenant, prepared pursuant to Section 3.1 above available upon request. The report shall also state the date the tenancy commenced for each rental Unit, the number of bedrooms in such Unit, and such other information as City may be required by law to obtain.

Section 3.3 Additional Information. Owner shall provide any additional information reasonably requested by City. City shall have the right to examine and make copies of all books, records or other documents of Owner which pertain to any Unit.

Section 3.4 Records.

(a) Owner shall keep and maintain at the principal place of business of the Owner set forth in Section 6.11 below, or elsewhere with the City's written consent, full, complete and appropriate books, records and accounts relating to the Development. Owner shall cause all books, records and accounts relating to the Development to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Regulatory Agreement. Owner shall cause all books, records, and accounts to be open to and available for inspection and copying by the City, its auditors or other authorized representatives at reasonable intervals during normal business hours. Owner shall cause copies of all tax returns and other reports that Owner may be required to furnish to any government agency to be open for inspection by the City at all reasonable times at the place that the books, records and accounts of Owner are kept. Owner shall preserve such records for a period of not less than five (5) years after their creation. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Development is pending at the end of the record retention period stated herein, then Owner shall retain the records until such action and all related issues are resolved. Such records are to include but are not limited to:

- (1) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;
- (2) Financial records; and
- (3) Records demonstrating compliance with the marketing, tenant selection, affordability, and income requirements.

(b) The City shall notify Owner of any records it deems insufficient. Owner has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Owner must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

EXHIBIT H

ARTICLE 4.

OPERATION OF THE DEVELOPMENT

Section 4.1 Residential Use. The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing.

Section 4.2 Compliance with Loan Documents and Development Regulatory Agreements. Owner shall comply with all the terms and provisions of the Loan Documents and any other regulatory requirement imposed on the Development, including but not limited to regulatory agreements associated with the Low Income Housing Tax Credits provided by the California Tax Credit Allocation Committee (the "Development Regulatory Documents"). Owner shall promptly notify the City in writing of the existence of any default under any Development Regulatory Documents and provide the City with copies of any such notice of default.

Section 4.3 Property Tax Exemption. Owner shall not apply for a property tax exemption for the Property under any provision of law other than Revenue and Taxation Section 214(g) without City's prior written consent.

Section 4.4 Taxes and Assessments. Owner shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Owner exercises its right to contest any tax, assessment, or charge against it, Owner, 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.

Section 4.5 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, or disabled status in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Owner or any person claiming under or through the 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, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of the Development. All deeds, leases or contracts made or entered into by Owner as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the DDLA.

Section 4.6 City Preference. To the extent permitted by law and consistent with the program regulations for funding sources used for the development of the Units, Owner shall give a preference in the rental of any Units to eligible households in which at least one member lives or works in the City or previously lived in the City. The preference stated in this section applies to the rentals of Units throughout the Term.

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Section 4.7 City Homeless Preference. To the extent permitted by law and consistent with the program regulations for funding sources used for the development of the Units, Owner shall give a preference in the rental of the Twenty Percent Units to City residents who are homeless.

Section 4.8 Section 8 Certificate Holders. The Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor, or similar programs. The Owner shall not apply selection criteria to holders of Section 8 certificate or similar certificates or vouchers that is more burdensome than criteria applied to all other prospective tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective tenants.

Section 4.9 Marketing Plan. No later than six (6) months prior to the date construction of the Development is projected to be complete, Owner shall submit to the City for approval its plan for marketing the Development to income-eligible households as required by this Regulatory Agreement (the "Marketing Plan"). The Marketing Plan shall be in compliance with all applicable fair housing, equal opportunity and affirmative fair marketing laws and requirements.

Upon receipt of the Marketing Plan, the City shall promptly review the Marketing Plan and shall approve or disapprove it within fifteen (15) days after receipt. If the Marketing Plan is not approved, the City shall give Owner specific reasons for such disapproval and Owner shall submit a revised Marketing Plan within fifteen (15) days of notification of the City's disapproval. Owner shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the City. If the Owner does not submit a revised Marketing Plan that is approved by the City at least three (3) months prior to the date construction of the Development is projected to be complete, Owner will be in default of this Regulatory Agreement.

Section 4.10 Environmental Requirements. Owner shall comply with the environmental requirements set forth in Section 6.7 of the DDLA and Article 6 of the Deed of Trust, which are incorporated herein.

ARTICLE 5.

PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities. The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility over management of the Development. The Owner shall retain a professional property management company approved by City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required.

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Section 5.2 Approval of Management Agent. The Development shall at all times be managed by an experienced management agent reasonably acceptable to City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Owner shall submit for City's approval the identity of any proposed Management Agent. The City has approved MidPen Property Manager as the Management Agent. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, City shall approve the proposed Management Agent by notifying the Owner in writing. Unless the proposed Management Agent is disapproved by City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 5.3 Performance Review. City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with City in such reviews.

Section 5.4 Replacement of Management Agent. If, as a result of a periodic review, City determines in its reasonable judgement that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, City shall deliver notice to Owner of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Owner of such written notice, City staff and Owner shall meet in good faith to consider methods for improving the financial and operating status of the Development. If after a reasonable period as determined by City (not to exceed sixty (60) days), City determines that the Owner is not operating and managing the Development in accordance with the material requirements and standards of this Agreement, City may require replacement of the Management Agent.

If, after the above procedure, City requires in writing the replacement of the Management Agent, Owner shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by City pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute default under this Agreement, and City may enforce this provision through legal proceedings as specified in Section 6.5.

Section 5.5 Management Policies. The Owner shall submit its written management plan with respect to the Development to City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

EXHIBIT H

Section 5.6 Property Maintenance. The Owner agrees, for the entire Term of this Agreement, to maintain or cause to be maintained all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition), reasonable wear and tear excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

In the event that the Owner breaches any of the covenants contained in this section and such default continues for a period of seven (7) days after written notice from City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from City with respect to landscaping and building improvements, then City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, which amount shall be promptly paid by the Owner to City upon demand.

Section 5.7 Social Services. Owner shall provide a variety of social services at the Development. Such social services are subject to the prior written approval of the City, in its reasonable discretion. Owner shall use its best efforts to create a comprehensive social service program that is targeted to the needs of the residents of the Development which may include, but is not limited to, the following services: after-school programs of an ongoing nature for school age children, financial planning skills, job coaching, and/or the availability of a bona fide services coordinator to the tenants. Owner shall ensure that all personnel providing or coordinating all social services shall be adequately trained and counseled, including with respect to the appropriate means and methods of communicating and interacting with residents. Any substantive change in the scope, amount, or type of social services to be provided at the Property shall be subject to prior reasonable approval of City and approval shall not be unreasonably withheld.

ARTICLE 6.
MISCELLANEOUS

Section 6.1 Transfers.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under the Ground Lease or other Loan Documents; and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Owner retains title. The term "Transfer"

EXHIBIT H

excludes the leasing of any single unit in the Development to an occupant in compliance with this Regulatory Agreement.

(b) Except as otherwise permitted in this Section 6.1, no Transfer is permitted without the prior written consent of the City, which the City may withhold in its sole discretion. The City Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the City.

(c) The City hereby approves the admission of the Investor Limited Partner to Owner as limited partner. The City hereby approves future Transfers of the limited partner interest of Owner provided that: (i) such Transfers do not affect the timing and amount of the Investor Limited Partner capital contributions provided for in the Partnership Agreement (as such capital contributions may be adjusted pursuant to the terms of the Partnership Agreement); and (ii) in subsequent Transfers, the Investor Limited Partner or an Affiliate thereof, retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(d) The City hereby approves a Transfer of the Property from Owner to MidPen Housing Corporation, or a non-profit Affiliate of MidPen Housing Corporation, and an assumption of the City Loan by such transferee at or prior to the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, (ii) the assignment and assumption agreement evidencing such Transfer requires the transferee to expressly assume the obligations of Owner under the Loan Documents, and (iii) the City is provided executed copies of all documents evidencing the Transfer.

(e) The City hereby approves the purchase of the Investor Limited Partner interest by MidPen Housing Corporation, or a non-profit Affiliate of MidPen Housing Corporation at or prior to the end of the Fifteen Year Compliance Period, provided that (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, and (ii) the City is provided executed copies of all documents evidencing the Transfer.

(f) In the event the general partner of Owner is removed by the limited partner of Owner for cause following default under the Partnership Agreement, the City hereby approves the Transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation or other entity with a 501(c)(3) tax exempt nonprofit corporation member or partner, with significant experience in the ownership and operation of affordable housing projects similar to the Development, and with financial resources sufficient for the ownership of the Development, as selected by the Investor Limited Partner and approved by the City, and (ii) the Investor Limited Partner or an Affiliate thereof, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above.

(g) The City hereby approves the grant of the security interests in the Development for financing approved in the Final Financing Plan as such term is defined in Section 1.1(x) of the DDLA.

EXHIBIT H

Section 6.2 Term. The provisions of this Agreement shall apply to the Property for the entire Term even if the entire City Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by City. City makes the City Loan on the condition, and in consideration of, this provision, and would not do so otherwise. Owner may request changes to the mix of affordable units if necessary to obtain competitive sources of financing for the Development. Any such changes shall be subject to the approval of the City Manager for the City, which approval shall not be unreasonably withheld or delayed.

Section 6.3 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (a) the anticipated date of the expiration of the Term, (b) any anticipated increase in Rent upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to City, and (d) a statement that a public hearing may be held by City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Owner shall also file a copy of the above-described notice with City.

(b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

Section 6.4 Covenants to Run with the Land. City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

Section 6.5 Enforcement by the City.

(a) If Owner fails to perform any obligation under this Agreement, and fails to cure the default within 30 days after City has notified the Owner in writing of the default or, if the default cannot be cured within 30 days, fails to commence to cure within 30 days and

EXHIBIT H

thereafter diligently pursue such cure, City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(1) Calling the Loan. City may declare a default under the Note, accelerate the indebtedness evidenced by the Note, and proceed with foreclosure under the Deed of Trust.

(2) Action to Compel Performance or for Damage. City may bring an action at law or in equity to compel Owner's performance of its obligations under this Agreement, and/or for damages.

(3) Remedies Provided Under Loan Documents. City may exercise any other remedy available at law or provided under the Loan Documents.

(b) The City shall provide notice of a default to the Investor Limited Partner and any limited partner of Owner who has requested written notice from the City in the manner set forth in Section 6.1 of the Loan Agreement.

Section 6.6 Attorney's Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.7 Recording and Filing. City and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Alameda. This Agreement encumbers only the Owner's leasehold interest in the Property and does not encumber the City's fee title to the Property.

Section 6.8 Governing Law. This Agreement shall be governed by the laws of the State of California.

Section 6.9 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Alameda, California.

Section 6.10 Notice. All notices given or certificates delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as shown on the signature page. Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

Section 6.11 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

EXHIBIT H

Section 6.12 Multiple Originals; Counterparts. This Regulatory Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 6.13 Revival of Agreement after Foreclosure. In the event there is a foreclosure of the Property, this Regulatory Agreement will revive according to its original terms if, during the Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or a leasehold interest in the Property.

IN WITNESS WHEREOF, the City and Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

[signatures on following page]

EXHIBIT H

Address:
City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
Attn: City Manager

CITY:

CITY OF UNION CITY, a California municipal corporation

By: _____

Its: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT H

Address:

MidPen Housing Corporation
303 Vintage Park Dr., Suite 250
Foster City, CA 94404
Attention: Chief Real Estate Development
Officer

OWNER:

MP Lazuli Landing Associates, a California
limited partnership

By: MP Lazuli Landing LLC, a California
limited liability company

By: Mid-Peninsula Hermanas,
Inc., a California nonprofit public
benefit corporation

By: _____

Its: _____

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT II

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A
Property Description

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
Attn: City Manager

Exempt From Recording Fee Pursuant to Government
Code § 27383

**NOTICE OF AFFORDABILITY RESTRICTIONS
ON TRANSFER OF PROPERTY**

Important notice to owners, purchasers, tenants, lenders, brokers, escrow and title companies, and other persons, regarding affordable housing restrictions on the real property described in this Notice: Affordable housing restrictions have been recorded with respect to the property described below (referred to in this Notice as the “Property”) which require that the Property be developed as an affordable rental housing development and that 39 of the units be rented to and occupied by persons and households of limited income at affordable rents.

Title of Document Containing Affordable Housing Restrictions:
Regulatory Agreement and Declaration of Restrictive Covenants (“Agreement”).

Parties to Agreement: MP Lazuli Landing Associates, a California limited partnership (“Owner”), and the City of Union City, a California municipal corporation (“City”).

The Agreement is recorded concurrently with this Notice, in the Official Records of Alameda County.

Legal Description of Property: See Exhibit “A” attached hereto and incorporated herein by this reference.

Property Location: Property bounded by Mission Boulevard, D Street, E Street and 2nd Street in the City of Union City, California. **[Insert street address]**

Assessor's Parcel Number of Property: _____.

Summary of Agreement:

- The Agreement requires Owner to develop an eighty-one (81) unit rental housing project on the Property. The Property is being leased by Owner from City under a "Ground Lease."
- The Agreement restricts the rental of
 - (i) Sixteen (16) Units that are required to be rented to and occupied by households whose annual income does not exceed 20% of Area Median Income for the Alameda County area, adjusted for household size ("20% AMI Households");
 - (ii) Twenty Three (23) Units that are required to be rented to and occupied by Very Low Income households, as defined in Health and Safety Code Section 50105;
- All as established and as published periodically by the California Department Of Housing and Community Development.
- The Agreement restricts the rents that may be charged to such households to the following maximum rents:
 - Affordable Rent for 20% AMI Households shall not exceed $30\% \times 20\%$ of Area Median Income divided by 12 for a household size appropriate to the unit, less a reasonable utilities allowance.
 - Affordable Rent for Very Low Income Households shall not exceed $30\% \times 50\%$ of Area Median Income divided by 12 for a household size appropriate to the unit, less a reasonable utilities allowance.
- Approximately 55 years after completion of the rental housing project on the Property, if necessary to ensure the financial feasibility of the rental housing project, the restrictions on some of the units restricted by the Agreement may be increased to maximum income levels of no more than 80% Area Median Income and maximum rents of no more than $30\% \times 60\%$ of AMI

divided by 12 for a household size appropriate to the unit, less a reasonable utilities allowance.

- o The term of the Agreement is the same as the term of the Ground Lease, which is ninety-nine (99) years.

This Notice does not contain a full description of the details of all of the terms and conditions of the Agreement. You will need to obtain and read the Agreement to fully understand the restrictions and requirements which apply to the Property.

This Notice is being recorded and filed in compliance with Health and Safety Code Section 33334.3(f)(3) and (4), and shall be indexed against Owner, who will own fee title to the improvements during the term of Owner's leasehold interest in the Property, and City.

CITY:

CITY OF UNION CITY, a California municipal corporation

By: _____

Its: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

OWNER:

MP Lazuli Landing Associates, a
California limited partnership

By: MP Lazuli Landing LLC, a
California limited liability company

By: Mid-Peninsula
Hermanas, Inc., a California
nonprofit public benefit
corporation

By: _____
Its: _____

DRAFT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

(seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

All of that certain real property located in the City of Union City, County of Alameda, State of California, described as follows:

APN: _____

DRAFT

3555995.2

EXHIBIT J

NON-RESIDENTIAL COMMUNITY SPACE SUBLEASE

This Non-Residential Community Space Sublease (this “Sublease”) is made and entered into as of _____, 202__, by and between MP Lazuli Landing Associates, L.P., a California limited partnership (“Landlord”), and **CITY OF UNION CITY**, a California municipal corporation (“Tenant”). Landlord and Tenant are hereafter collectively referred to as the “Parties.”

RECITALS

A. The Landlord is the ground lessee of real property bounded by Mission Boulevard, D Street, E Street and 2nd Street in the City of Union City, California (the “Property”), pursuant to a Ground Lease between Landlord and Tenant dated as of _____, 202_ (the “Ground Lease”). The Property is more particularly described in Exhibit A attached hereto and incorporated herein by this reference. The Ground Lease was entered pursuant to a Disposition, Development and Loan Agreement between Tenant and MidPen Housing Corporation (“MidPen”), dated as of _____, 2020 (the “Agreement”). MidPen has assigned its interest in the Agreement to Landlord.

B. The Agreement provides for Landlord to construct and operate an eighty-one (81) unit affordable multifamily apartment project on the Property (the “Project”). The Project is also required to contain certain office and administrative space for the Landlord in order to oversee property management and resident services for the residential development in addition to office and administrative space for the Tenant. For avoidance of doubt, the office and administrative space for the Tenant shall be referred to herein as the “Office Space” and is the subject of this Sublease.

C. Tenant desires to sublease from Landlord approximately 6,000 square feet of the Office Space within the Project, together with nine (9) reserved parking spaces for Tenant staff and guests (the “Premises”), as depicted in Exhibit B attached hereto and incorporated herein by this reference.

D. The Tenant desires to sublease the Premises from the Landlord, and the Landlord desires to sublease the Premises to the Tenant conditioned upon the terms therein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and the Tenant hereby agree as follows:

ARTICLE 1.**BASIC SUBLEASE PROVISIONS**1.1 Tenant’s contact information:

City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
Attn: City Manager

EXHIBIT J

1.2 Landlord's contact information:

MP Lazuli Landing Associates, L.P.
303 Vintage Park Dr. Suite 250
Foster City, CA 94404
Attn: President

1.3 Premises: More particularly described as the area shown in Exhibit B, attached.

1.4 Commencement Date: Upon the receipt of a permanent certificate of occupancy for the Project to be constructed by Landlord upon the Property or if separate a separate building permit and certificate of occupancy is issued for the Office Space, upon issuance of a permanent certificate of occupancy for the Office Space.

1.5 Term: Concurrent with Ground Lease term.

1.6 Option(s) to Extend Term: None

1.7 Rent: \$1.00 per year.

1.8 Security Deposit: None

1.9 Permitted Uses: Office and administrative.

1.10 Parking: Tenant and its employees, officers and guests are entitled to use nine (9) reserved parking spaces on the Property, for no charge.

1.11 Operating Costs and Property Taxes. Tenant shall pay its proportionate share of Operating Costs and Property Taxes and other amounts in accordance with Section 4.5.

ARTICLE II. DEFINITIONS

As used in this Sublease, the following terms shall have the definitions set forth below. Additional terms are defined in the remainder of this Sublease.

2.1 "Additional Rent" means any amount of rent beyond the "Rent" as described in section 1.7 that Tenant is required to pay Landlord (e.g., Tenant's share of Operating Costs and Taxes, late fees, or administrative charges), pursuant to this Sublease.

2.2 "Alterations" means any decorations, modifications, additions or improvements made in, on, about, under or contiguous to the Premises by or for the benefit of Tenant including but not

EXHIBIT J

limited to, telecommunications and/or data cabling, lighting, HVAC and electrical fixtures, pipes and conduits, partitions, cabinetwork and carpeting.

2.3 “Commencement Date” is the date set forth in Section 1.4, and means the date upon which (i) Tenant shall be permitted to occupy the Premises for the conduct of Tenant’s operations, and (ii) the date upon which Tenant’s obligation to pay Rent shall commence.

2.4 “Fiscal Year” means July 1 through June 30 of a given twelve-month period

2.5 “Premises” means the rented premises shown on Exhibit B.

2.6 “Property” means that real property bounded by Mission Boulevard, D Street, E Street and 2nd Street in the City of Union City, California.

2.7 “Rent” means the amount to be paid by Tenant to Landlord, pursuant to section 1.7

2.8 “Term” means the term of this Sublease as set forth in Section 1.5, as such may be modified pursuant to the terms hereof.

ARTICLE III**PREMISES AND TERM**

3.1 Subleased Premises. Subject to and upon the terms and conditions set forth herein, Landlord hereby subleases the Premises to Tenant and Tenant hereby subleases the Premises from Landlord. The Premises consists of an office and administrative space of not less than six thousand (6,000) square feet, and nine (9) reserved structure parking spaces, as depicted in the diagram attached hereto as Exhibit B including all tenant improvements installed in the Premises as of the Commencement Date (“Improvements”). Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises or the Property except as specifically stated in this Sublease. Tenant and Landlord hereby stipulate and agree that the square footage of the Premises is as stated herein, notwithstanding any minor variations in measurement or other minor variations that may have occurred in the calculation thereof.

3.2 Term and Commencement. The Term of this Sublease shall commence on the Commencement Date, and unless sooner terminated as provided herein, the Term shall be for the period set forth in Section 1.5 as the same may be extended by an amendment to this Sublease duly signed by both parties.

3.3 No Representations. Tenant acknowledges that neither Landlord nor any of Landlord’s agents has made any representation or warranty as to the suitability or fitness of the Premises for the conduct of Tenant’s business, and that neither Landlord nor any agent of Landlord has agreed to undertake any alterations or additions or to construct any tenant improvements to the Premises except as expressly provided in this Sublease.

EXHIBIT J

ARTICLE IV

RENT, OPERATING EXPENSES, AND DEPOSITS

4.1 Rent. From and after the Commencement Date, Tenant shall pay to Landlord the annual Rent set forth in Section 1.7. Each installment of Rent shall be due and payable to Landlord in advance, on the Commencement Date and each anniversary of the Commencement Date during the Term, without abatement, deduction, claim or offset except as otherwise expressly provided herein, and without prior notice, invoice or demand, at Landlord's address or such other place as Landlord may designate from time to time. Tenant may prepay the Rent for all or part of the Term in Tenant's discretion.

4.2 Utilities. Tenant shall pay for all gas, electricity, heat, ventilation and air conditioning, trash, water, sewage, telephone, cable, and internet services used in the Premises. If such utilities are not separately metered and/or billed, Tenant shall pay as Additional Rent as part of Operating Costs a pro rata portion of such utility services as are provided the Property. Landlord agrees to cooperate as reasonably required by Tenant to assist Tenant with its obligations under the preceding sentence.

4.3 Taxes and Operating Costs. Tenant shall pay to Landlord, as Additional Rent, the following:

(a) Personal Property, Gross Receipts, Leasing Taxes. This Section 4.3(a) is intended to deal with impositions or taxes directly attributed to Tenant or this transaction, as distinct from taxes attributable to the building or common areas of the Project which are to be allocated among various tenants and others. Tenant shall pay before delinquency, any and all taxes levied or assessed and which become payable during the term hereof upon Tenant's equipment, furniture, fixtures and other personal property located in the Premises. In addition to all other Rent to be paid by Tenant hereunder, Tenant shall reimburse to Landlord, upon demand, any and all taxes payable by Landlord (other than net income taxes) whether or not now customary or within the contemplation of the parties hereto, including without limitation taxes upon, allocable to, or measured by or on the rental payable hereunder, such as any gross receipts tax or excise tax levied by the State, any political subdivision thereof, or the Federal Government with respect to the receipt of such rental; taxes upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; taxes upon or measured by the value of Tenant's personal property or leasehold improvements located in the Premises; or taxes upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments. If such taxes are included in the Landlord bill for the real estate taxes for the Project, then Tenant shall pay to Landlord as Additional Rent the full amount of such taxes within ten (10) days after demand from Landlord.

(b) Property Taxes. All property taxes levied on the land and buildings upon the land in which the demised Premises are located ("Property Taxes") shall be paid by Landlord. Property Taxes shall include any form of assessment, real estate, general, special, ordinary, extraordinary or rental levy or tax (other than inheritance, personal income or estate taxes), improvement bond and/or

EXHIBIT J

license fee imposed upon the Project. Property Taxes shall also include, without limitation, any increase which results from a change in ownership or new construction. Tenant shall cooperate with Landlord to secure an exemption from Property Taxes applicable to the Premises. If Tenant fails to maintain its status as a public agency or tax exempt organization, or subleases the Premises for a use or to an entity that results in the Premises not being exempt from Property Taxes or fails to timely file any necessary documentation to maintain the exemption from Property Taxes, then, upon demand by Landlord, Tenant shall pay to Landlord a proportionate share of Property Taxes as equitably determined by Landlord based on the annual tax bills issued by the County Assessor and/or other governmental entities with respect to the parking and commercial component of the Project.

(c) Other Services. Tenant shall have its own dedicated trash facilities and will be responsible for the maintenance and management of the trash facilities and payment of trash service serving the Premises.

(d) Operating Costs. Tenant's proportionate share with respect to Operating Costs shall be determined by Landlord and generally based upon the percentage ratio the Premises rentable square footage bears to the total rentable square footage of the Project. "Operating Costs" shall mean the total amounts paid or payable, whether by Landlord or others on behalf of Landlord, in connection with the ownership, maintenance, repair, replacement and operations of the building and the garage of the Project in accordance with Landlord's standard operating and accounting procedures. Operating Costs include, landscaping maintenance costs, fire safety monitoring and maintenance costs; sewer charges; and insurance costs. Operating Costs shall not include legal or accounting expenses incurred expressly for negotiating a lease with a particular tenant, or as a result of a default of a specific tenant, which negotiation or default does not affect the operation of the Project, or costs incurred by Landlord to construct leasehold improvements for any particular tenant, including Tenant.

(e) Method of Payment. Amounts payable by Tenant under Section 4.3 hereof shall be paid as follows, unless otherwise provided:

(i) Estimated Monthly Payments. Tenant shall pay to Landlord one-twelfth (1/12th) of the amount of Tenant's proportionate share of Operating Costs and Property Taxes as estimated by Landlord in advance, in good faith, to be due from Tenant without any deduction or set off. If at any time during the course of the fiscal year, Landlord determines that Property Taxes or Operating Costs are projected to vary from the then estimated costs for such items by more than ten percent (10%), Landlord may, by written notice to Tenant, revise the estimated Property Taxes and/or Operating Costs for the balance of such fiscal year, and Tenant's monthly installments for the remainder of such year shall be adjusted so that by the end of such fiscal year Tenant will have paid to Landlord Tenant's proportionate share of such revised expenses for such year.

(ii) Annual Reconciliation. Annually, as soon as is reasonably possible after the expiration of each calendar year, Landlord shall prepare in good faith and deliver to Tenant a comparative statement, which statement shall be conclusive between the parties hereto, setting forth the (1) the total of Tenant's estimated payment of Tenant's proportionate share of Property Taxes and Operating Costs paid by Tenant for such calendar year, and (2) actual amount of Tenant's

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proportionate share of Operating Costs and Property Taxes determined by Landlord in accordance with the provisions of Section 4.3.

(iii) Adjustment. If the aggregate amount of such estimated payments made by Tenant in any calendar year should be less than the amount due for such calendar year, then Tenant shall pay to Landlord as Additional Rent, upon demand, the amount of such deficiency. If the aggregate amount of such payments made by Tenant in any calendar year of the Term should be greater than the amount due for such year, then should Tenant not be otherwise in default hereunder, the amount of such excess will be applied by Landlord to the next succeeding installments of such Additional Rent due hereunder; and if there is any such excess for the last calendar year of the Term, the amount thereof will be refunded by Landlord to Tenant within sixty (60) days of the last day of the Term, provided Tenant is not otherwise in default under the terms of this Sublease. Tenant shall not be entitled to receive interest on any excess amounts paid hereunder.

ARTICLE V USE OF PREMISES

5.1 Permitted Use. The Premises shall be used solely for the purposes set forth in Section 1.9 ("Permitted Use") and for no other purpose without written consent of Landlord, which may be granted or withheld in Landlord's sole discretion. Tenant shall not do or permit anything to be done in or about the Premises or the Property, nor bring or keep anything therein that would in any way subject Landlord to liability, increase the premium rate of or affect any fire, casualty, rent or other insurance relating to the Property or any of the contents of the Premises, or cause a cancellation of, or give rise to any defense by an insurer to any claim under, or conflict with, any policies for such insurance. If any act or omission of Tenant results in an increase in premiums, Tenant shall pay to Landlord upon demand the amount of such increase.

5.2 Signage. Tenant shall be permitted to place a sign on the exterior door of the Premises containing Tenant's name and logo. Tenant shall obtain the prior approval of the Landlord, which approval may be withheld in Landlord's reasonable discretion, before placing any other sign or symbol on doors or windows or elsewhere in or about the Premises so as to be visible from the public areas or exterior of the Property, or upon any other part of the Property, including building directories. Any signs or symbols which have been placed without Landlord's approval may be removed by Landlord. Upon expiration or termination of this Sublease, all signs installed by Tenant shall be removed and any damage resulting therefrom shall be promptly repaired by Tenant, or such removal and repair may be done by Landlord and the cost charged to Tenant as Additional Rent.

5.3 Repairs and Replacements. Tenant shall repair and maintain the Premises, including tenant improvements, fixtures and furnishings, appliances, floor structures, pipes and conduits, utility installation, air conditioning and heating equipment, electrical, mechanical and plumbing systems and surveillance cameras exclusively serving the Premises, glazing, doors and windows in good order and repair, and Tenant shall, at Tenant's sole expense, make all repairs, replacements, alterations, or improvements to the extent triggered by or related to (i) Tenant's particular use of the

EXHIBIT J

Premises, and/or (ii) any improvements or Alterations made by or on behalf of Tenant to the Premises. Landlord shall provide Tenant access to the foregoing as necessary or convenient to make such repairs, replacements, alternations or improvements. Except as provided in clauses (i) or (ii) in the preceding sentence, and except for any damage caused by Tenant or anyone under Tenant's control acts or omissions, Tenant shall not be responsible for the performance or cost of the maintenance, repair or replacement of any capital improvements on the exterior of the Premises, except for any exterior surveillance cameras exclusively serving the Premises, which shall be the responsibility of Landlord at its sole expense. If Tenant fails to maintain or keep the Premises in good repair, at Landlord's option, Landlord may, after providing Tenant no less than thirty (30) days' prior written notice, perform any such required maintenance and repairs and Tenant shall pay Landlord's reasonable costs incurred in connection with such repairs, plus a percentage of such costs sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs and expenses in connection therewith.

5.4 Parking. Landlord hereby grants to Tenant an exclusive license and right for use by Tenant and its customers, guests, licensees, invitees, employees and agents, nine (9) parking spaces on the Property for no additional charge. Tenant's parking spaces shall be marked as reserved for use by Tenant and its customers, guests, licensees, invitees, employees and agents.

ARTICLE VI

ALTERATIONS AND ADDITIONS

6.1 Alterations and Improvements. Tenant may not make any Alterations to the Property or Premises without the prior written approval of Landlord. Any Landlord-approved alterations shall be done at Tenant's expense, in a good and workmanlike manner, in conformity with plans and specifications reviewed and approved by Landlord, and in compliance with all applicable laws. Tenant shall obtain all necessary governmental approvals and permits for such alterations. Tenant shall give Landlord not less than ten (10) business days' notice prior to the commencement of construction so that Landlord may post a notice of nonresponsibility on the Premises. In no event shall any alteration, without the prior written consent of Landlord:

- (i) affect the exterior of the Property,
- (ii) affect any structural portion of the Property, including without limitation, the roof,
- (iii) require any change to the basic floor plan of the Premises or any change to the structural or mechanical components of the Premises,
- (iv) diminish the value of the Premises,
- (v) result in an increase in demand for building services or utilities,
- (vi) cause an increase in the premiums for hazard or liability insurance carried by Landlord, or
- (vii) overload the floor load capacity or unduly burden the plumbing, heating, ventilation, air conditioning, electrical or other basic systems that serve the Property.

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6.2 Liens. Tenant shall not permit any mechanics', materialmen's or other liens, to be filed against the Property or against Tenant's subleasehold interest in the Premises. Landlord has the right at all times to post and keep posted on the Premises any notice that it considers necessary for protection from such liens. If Tenant fails to cause the release of record of any lien(s) filed against the Premises or Tenant's subleasehold estate therein, by payment or posting of a proper bond within ten (10) days from the date of the lien filing(s), then Landlord may, at Tenant's expense, cause such lien(s) to be released by any means Landlord deems proper, including but not limited to payment of or defense against the claim giving rise to the lien(s). All sums reasonably disbursed, deposited or incurred by Landlord in connection with the release of the lien(s), including but not limited to all costs, expenses and attorney's fees, shall be due and payable by Tenant to Landlord as Additional Rent on demand by Landlord.

6.3 Ownership of Improvements. As between Landlord and Tenant, during the Term of this Sublease, Tenant shall own all Improvements now existing or hereafter constructed by Tenant upon the Premises. Upon termination of this Sublease Landlord shall become the owner of all Improvements within the Premises and Tenant shall have no further right, or interest therein or liability or responsibility therefor.

ARTICLE VII

INSURANCE AND INDEMNITY

7.1 Indemnity. To the fullest extent permitted by law, Tenant shall defend (with counsel reasonably acceptable to Landlord), indemnify and hold Landlord, its officers, directors, employees, agents, contractors, successors and assigns ("Indemnitees") harmless from and against any and all claims arising out of or relating directly or indirectly to this Sublease or the Premises ("Claims"), including without limitation, Claims for or relating to loss of or damage to property, injury or death of any person, and economic losses and consequential or resulting damage of any kind, including any Claim arising from or in connection with or in any way attributable to: (i) the use or occupancy, or manner of use or occupancy of the Premises or the Property by Tenant or any invitee, guest or licensee of Tenant, (ii) any act, error, omission or negligence of Tenant or Tenant Parties or any invitee, guest or licensee of Tenant in, on or about the Property including without limitation 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, any act or omission of Tenant, (iii) any activity, work, or thing done, omitted, permitted, allowed or suffered by Tenant or Tenant Parties in, at, or about the Premises or the Property, or (iv) any breach or default in performance of any obligation on Tenant's part in the performance of any covenant or agreement to be performed under this Sublease, except to the extent caused by the sole gross negligence or willful misconduct of the Indemnitees. The provisions of this section shall not be construed or interpreted as restricting, limiting or modifying Tenant's insurance obligations under this Sublease and are independent of such obligations. Tenant's compliance with insurance requirements set forth in this Sublease shall not restrict, limit or modify Tenant's indemnification obligations hereunder. The provisions of this section shall survive the expiration or earlier termination of this Sublease.

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7.2 Tenant's Insurance. Tenant shall, at its sole expense, procure and maintain throughout the Term (plus any later periods where Tenant may be in occupancy of the Premises) all of the insurance coverages, of the type and amounts as described in Exhibit C, attached.

ARTICLE VIII

ASSIGNMENT AND SUBLETTING

8.1 Right to Assign and Sublet. Tenant shall have the right to assign or sublet all or any part of Tenant's interest in this Sublease or in the Premises to Centro de Servicios, without obtaining the prior written consent of Landlord. Tenant may also assign or sublet all or any part of Tenant's interest in this Sublease or in the Premises to another community-based nonprofit entity, subject to the reasonable approval of Landlord. Any assignment or sublease shall be solely for the Permitted Use. Any other proposed assignment of this Sublease or sublease of the Premises shall require the prior written consent of the Landlord, which may be granted, withheld or conditioned by Landlord in its sole and absolute discretion.

8.2 No Release of Obligations. No subtenant may assign its sublease, or further sublet its subleased premises, without Landlord's prior written consent, which consent may be granted, withheld or conditioned by Landlord in its sole and absolute discretion. Neither an assignment or subletting nor the collection of rent by Landlord from any person other than Tenant shall be deemed a waiver of any of the provisions of this Article or release Tenant from its obligations to comply with this Sublease, and Tenant shall remain fully and primarily liable for all of Tenant's obligations under this Sublease.

ARTICLE IX

DAMAGE AND DESTRUCTION

9.1 Repair and Restoration; Termination Rights. If all or part of the Premises is damaged by fire or other casualty, such that access to or use and occupancy of the Premises is materially impaired, within forty-five (45) days of the date of the damage, Landlord shall notify Tenant of the estimated time, in Landlord's reasonable judgment, required for repair or restoration ("**Repair Period**"). If the estimated Repair Period is one hundred eighty (180) days or less, Landlord shall proceed promptly and diligently to repair or restore the Premises or the portion of the Premises necessary for Tenant's occupancy, and this Sublease shall remain in effect. If the estimated Repair Period is in excess of one hundred eighty (180) days from the date of the casualty, Landlord, at its option, shall either (a) commence to repair the damage, in which case this Sublease shall continue in full force and effect, or (b) terminate this Sublease as of the date specified by Landlord in a notice of termination, and this Sublease shall terminate on the date specified in the notice.

9.2 Damage Near End of Term. Notwithstanding anything to the contrary set forth in this Article, if the Premises are damaged during the last twelve (12) months of the Term, Landlord and Tenant shall each have the option to terminate this Sublease by giving written notice to the other of the exercise of that option within thirty (30) days after the damage or destruction, and this Sublease

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shall terminate as of the date specified in such notice which shall be not before the date of such notice nor more than 30 days after the date of such notice.

9.3 Waiver of Statutory Provisions. The provisions of this Sublease, including those in this Article IX, constitute an express agreement between Landlord and Tenant that applies in the event of any damage to the Premises or Property. Tenant, therefore, fully waives the provisions of any statute or regulation, including California Civil Code §§ 1932(2) and 1933(4), relating to any rights or obligations concerning any such casualty.

ARTICLE X**SURRENDER OF PREMISES; HOLDING OVER**

10.1 Surrender of Premises. On expiration of this Sublease, Tenant shall surrender the Premises in the same condition as when the Term commenced, ordinary wear and tear excepted. Except for furniture, equipment and trade fixtures (other than those which are affixed to the Premises so that they cannot be removed without material damage to the Premises) all alterations, additions or improvements made in or upon the Premises, either by Landlord or Tenant, may, at Landlord's election, become Landlord's property without compensation to Tenant; provided that, upon reasonable written request of Landlord, Tenant shall, at its expense and without delay, remove any alterations, additions or improvements (including, without limitation, all telecommunications equipment and cabling, and all alterations and improvements made by Tenant after the Commencement Date) made to the Premises by Tenant and designated by Landlord to be removed, and shall repair any damage to the Premises caused by such removal. If Tenant fails to complete such removal or to repair the Premises, Landlord may complete such removal and repair, and Tenant shall reimburse Landlord therefor. If Tenant fails to remove such property as required under this Sublease, Landlord may dispose of such property in its sole discretion without any liability to Tenant, and further may charge the cost of any such disposition to Tenant.

10.2 Holdover Tenancy. If Tenant remains in possession of the Premises after expiration or earlier termination of this Sublease, Tenant shall be deemed, at Landlord's option, to occupy the Premises as a tenant from month-to-month. During such tenancy (and prior to any termination by Landlord), Tenant agrees to pay Landlord, monthly in advance, an amount equal to the then fair market rental (as reasonably determined by Landlord) for the Premises, together with all other amounts payable by Tenant to Landlord under this Sublease. Except as provided in the preceding sentence, such month-to-month tenancy shall be on the same terms and conditions of this Sublease except that any rights or options pertaining to additional space shall be deemed to be terminated and shall be inapplicable thereto. Landlord's acceptance of Rent after such holding over with Landlord's written consent shall not result in any other tenancy or in a renewal of the initial term of this Sublease. If Tenant remains in possession of the Premises after the expiration or earlier termination of this Sublease without Landlord's written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay Rent during the holdover period in an amount equal to the greater of (i) one hundred fifty percent (150%) of the then fair market rental (as reasonably determined by Landlord) for the Premises, or (ii) two hundred percent (200%) of the Rent which would become due the last month of the Term, together with all other amounts payable by Tenant to Landlord.

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ARTICLE XI**LANDLORD'S RESERVED RIGHTS.**

11.1 Rights Reserved to Landlord. Without notice and without liability to Tenant, and without effecting an eviction or disturbance of Tenant's use or possession, Landlord shall have the right to (i) enter the Premises at reasonable times and with reasonable advance notice (and at any time in the event of an emergency), to inspect or repair the Premises and to perform any acts related to safety, protection, or improvement of the Premises; (ii) install and maintain signs on and in the Premises and the Property; and (iii) make such rules and regulations as, in the reasonable judgment of Landlord, may be needed from time to time for the safety of the tenants, the care and cleanliness of the Premises and the Property and the preservation of good order therein. Landlord shall at all times retain a key with which to unlock all of the doors in the Premises, except Tenant's vaults and safes. If an emergency necessitates immediate access to the Premises, Landlord may use whatever force is necessary to enter the Premises and any such entry to the Premises shall not constitute a forcible or unlawful entry into the Premises, a detainer of the Premises or an eviction of Tenant from the Premises or any portion thereof.

ARTICLE XII**DEFAULT AND REMEDIES**

12.1 Tenant's Default. It shall be an "Event of Default" hereunder if Tenant shall:

(a) fail to pay when due any installment of Rent, or fail to pay any other amount owed by Tenant to Landlord under this Sublease as and when due and such failure continues for five (5) days following written notice thereof to Tenant by Landlord;

(b) fail to provide any certificate, instrument or assurance as required by this Sublease if the failure continues for ten (10) days after written notice of the failure to Tenant;

(c) make a general assignment for the benefit of its creditors or file a petition for bankruptcy or other reorganization, liquidation, dissolution or similar relief or have a proceeding filed against Tenant seeking any relief mentioned in this subsection (c) which is not discharged within sixty (60) days thereafter;

(d) abandon or vacate the Premises for more than three (3) consecutive months;

(e) assign this Sublease or sublease any portion of the Premises in violation of Article VIII; or

(f) fail to comply with any other provision of this Sublease in the manner required hereunder and such failure continues for thirty (30) days after written notice thereof to Tenant by Landlord (or if the noncompliance cannot by its nature be cured within the 30-day period, if Tenant

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fails to commence to cure such noncompliance within the 30-day period and thereafter diligently prosecute such cure to completion).

12.2 Remedies on Default. Upon the occurrence of an Event of Default, Landlord shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to Landlord at law or in equity. These remedies are not exclusive but instead are cumulative.

(a) Continue Sublease. Landlord may continue this Sublease in full force and effect. In such case, so long as Landlord does not terminate Tenant's right to possession, this Sublease will continue in effect and Landlord shall have the right to collect Rent when due, and may undertake efforts to relet the Premises, or any part of them, to third parties for Tenant's account. No act by Landlord allowed by this Section shall terminate this Sublease unless Landlord terminates Tenant's right to possession. After an Event of Default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, Tenant shall have the right to assign or sublet its interest in this Sublease in accordance with the provisions of Article VIII, but Tenant shall not be released from liability.

(b) Terminate Sublease. Landlord may terminate this Sublease and Tenant's right to possession of the Premises at any time following an Event of Default. No act by Landlord other than giving written notice to Tenant shall terminate this Sublease. Acts of maintenance or efforts to relet the Premises shall not constitute a termination of Tenant's right to possession. On termination, Landlord shall have the right to recover from Tenant all of the following:

(i) The amount of any unpaid Rent that had been earned at the time of termination of this Sublease;

(ii) The amount of unpaid Rent that would have been earned after the date of termination of this Sublease less any amount of the unpaid Rent that Tenant proves could have been reasonably avoided;

(iii) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform obligations under this Sublease; and

(iv) Any other amounts, in addition to or in lieu of those listed above that may be permitted by law.

12.3 Landlord's Default; Waiver of Liability. Landlord's failure to perform any of its obligations under this Sublease shall constitute a Landlord Event of Default hereunder if the failure continues for thirty (30) days after written notice of the failure from Tenant to Landlord. If the required performance cannot be completed within thirty (30) days, Landlord's failure to perform shall not constitute a Landlord Event of Default if Landlord undertakes to cure the failure within such thirty (30) day period and diligently and continuously attempts to complete the cure as soon as reasonably possible. Tenant waives any right to terminate this Sublease and to vacate the Premises upon Landlord's default under this Sublease. Tenant's sole remedy on Landlord's default is an action for damages or injunctive or declaratory relief. The obligations of Landlord shall not be personally binding on, nor shall any resort be had to the private property or assets of any of its

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investment managers, trustees, directors, officers, partners, beneficiaries, members, stockholders, employees, or agents. In no case shall Landlord be liable to Tenant hereunder for any lost profits, damage to business, or any form of special, indirect or consequential damages.

ARTICLE XIII
MISCELLANEOUS

13.1 No Waiver. No receipt and retention by Landlord of any payment tendered by Tenant in connection with this Sublease shall constitute an accord and satisfaction, or a compromise or other settlement, notwithstanding any accompanying statement, instruction or other assertion to the contrary unless Landlord expressly agrees to an accord and satisfaction, or a compromise or other settlement, in a separate writing duly executed by Landlord. Landlord will be entitled to treat any such payments as being received on account of any item or items of Rent, interest, expense or damage due in connection herewith, in such amounts and in such order as Landlord may determine at its sole option. Any waiver of any condition or provision set forth in this Sublease shall not be deemed a waiver of any subsequent breach of such condition or provision or of any other condition or provision, nor shall any such waiver be deemed a continuing waiver.

13.2 Severability. The Parties intend this Sublease to be legally valid and enforceable in accordance with all of its terms to the fullest extent permitted by law. If an arbitrator or a court of competent jurisdiction holds any provision hereof to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining clauses, or portions of them, shall not be affected unless an essential purpose of this Sublease would be defeated by loss of the invalid or unenforceable provision.

13.3 Governing Law; Venue; Construction. This Sublease shall be construed according to the laws of the State of California without regard to principles of conflict of laws. Any action or proceeding that relates to, or arises from, this Sublease shall be brought in a state court of competent jurisdiction located in Alameda County. The captions used for the Sections and Articles of this Sublease have been inserted for convenience only and shall not be used to alter or interpret the content of this Sublease.

13.4 Binding Effect; Survival. The covenants, conditions, warranties and agreements contained in this Sublease shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. The representations and warranties of Landlord and Tenant and the indemnification obligations of Landlord and Tenant set forth herein shall survive the expiration or termination of this Sublease as shall all other provisions hereof which are intended to survive such expiration or termination.

13.5 Time. Time is of the essence of each provision of this Sublease.

13.6 Entire Agreement; Amendments. This Sublease and Exhibits A, B, and C, attached hereto and incorporated herein by this reference, constitutes the final, complete, and exclusive statement of the terms of the agreement between Landlord and Tenant pertaining to the sublease of the Premises and supersedes all prior and contemporaneous understandings or agreements of the

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parties. This Sublease may not be amended or modified except in a writing signed by both Parties.

13.7 Notices. All notices delivered pursuant to this Sublease shall be in writing and delivered to Landlord or Tenant at the applicable address designated in Section 1.1 and 1.2 or to such other address as may hereafter be designated by either party by written notice delivered to the other party in accordance with this Section. Such notices shall be effective on the earlier to occur of actual receipt or: (i) if mailed, three (3) days after posting at a United States post office, (ii) upon receipt if mailed by certified mail with return receipt requested, and (iii) upon delivery if delivered by overnight delivery service and delivery is confirmed by the delivery service.

13.8 Force Majeure. Except as otherwise provided in this Sublease, the time for performance of an obligation other than payment of money under this Sublease shall be extended for the period during which a party is prevented from performing due to Unavoidable Delay. "Unavoidable delay" shall mean any and all delay beyond the applicable party's reasonable control, including without limitation, delays caused by the other party; governmental restrictions, regulations, controls, preemptions or delays; orders of civil, military or naval authorities; strikes, labor disputes, lock-outs, shortages of labor or materials or reasonable substitutes therefore; Acts of God; quarantines, epidemics or pandemics or governmental orders related thereto, fire, earthquake, floods, explosions or other casualties; extreme weather conditions or other actions of the elements; enemy action, civil commotion, riot or insurrection.

13.9 Attorneys' Fees. If any judicial remedy or arbitration is undertaken to enforce or interpret any provision of this Sublease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, expert witnesses fees, post judgment collection costs, and other expenses, in addition to any other relief to which such party may be entitled.

13.10 Authority. Each party warrants and represents that it has full authority to enter into this Sublease, that this Sublease constitutes a binding obligation of such party, and that the individual(s) signing on behalf of such party are duly authorized to bind such party hereto.

13.11 Tenant Approvals. Whenever the consent or approval of Tenant is required hereunder, such consent or approval may be granted or withheld by the City Manager of Tenant or his or her designee, unless the City Manager determines in his or her discretion that such matter shall be referred to Tenant's governing body for consideration.

13.12 Counterparts. This Sublease may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same 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 except having additional signature pages executed by any other party. This Sublease shall take effect when signed by all Parties.

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NOW THEREFORE, Landlord and Tenant have executed this Non-Residential Community Space Sublease as of the date first written above.

TENANT

CITY OF UNION CITY,
a California municipal corporation

By: _____

LANDLORD:

MP Lazuli Landing Associates, L.P.,
a California limited partnership

By: MP Lazuli Landing LLC, a
California limited liability company

By: Mid-Peninsula Hermanas, Inc., a
California nonprofit public benefit corporation

By: _____
Its: - _____

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List of Exhibits

Exhibit A: Property Description

Exhibit B: Map of Premises (including Common Area)

Exhibit C: Insurance Requirements

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EXHIBIT A

PROPERTY DESCRIPTION

Real property in the City of Union City, County of Alameda, State of California, described as follows:

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EXHIBIT B

**MAP OF PREMISES
(With Common Area Depicted)**

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EXHIBIT C

INSURANCE COVERAGE

1. General Requirements. All insurance policies required to be carried by Tenant (except Tenant's business personal property insurance) hereunder shall conform to the following requirements:

(a) Tenant's policies of insurance required hereunder shall be provided at Tenant's sole expense;

(b) Said policies shall name the Landlord and any other party the Landlord so specifies that has a material financial interest in the Project (the "Landlord Entities") as additional insureds (General Liability) and loss payee (Property—Special Form).

(c) The insurer under each policy shall carry a designation in "Best's Insurance Reports" as issued from time to time throughout the term as follows: Policyholders' rating of A; financial rating of not less than VII;

(d) The insurer shall be qualified to do business in the state of California;

(e) The policy shall be in a form and include such endorsements as are acceptable to Landlord;

(f) Certificates of insurance (Liability insurance on ACORD Form 25 and Property insurance on ACORD Form 27) shall be delivered to Landlord at commencement of the term and certificates of renewal at least thirty (30) days prior to the expiration of each policy and when requested by Landlord; and

(g) Each policy shall require that Landlord be notified in writing by the insurer at least thirty (30) days prior (10 days for Non-Payment of Premium) to any cancellation or expiration of such policy, or any reduction in the amounts of insurance carried.

2. Required Insurance. Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Sublease, a commercial general liability insurance policy insuring Tenant and protecting Landlord and the Landlord Entities against any liability to the public or to any invitee at the Project against the risks of, bodily injury and property damage, personal injury, contractual liability, completed operations, products liability, host liquor liability, owned and non-owned automobile liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be a combined single limit policy in an amount not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence with a FIVE MILLION DOLLAR (\$5,000,000) annual aggregate. Landlord, the Landlord Entities and any lender and any other party in interest designated by Landlord shall be named as additional insured(s). The policy shall contain cross liability endorsements with coverage for Landlord for the negligence of Landlord even though Landlord is named as an additional insured; shall insure performance by Tenant of the indemnity provisions of this Sublease; shall be primary, not contributing with, and not in excess of coverage which Landlord may carry; shall provide for severability of interest; shall provide that an act or omission of one of the insured or additional insureds which would void or otherwise reduce coverage shall not void or reduce coverages as to the other insured or additional insureds; and shall afford coverage after the term of this Sublease (by separate policy or extension if necessary) for all claims based on acts, omissions, injury or

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damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the term of this Sublease. Any additional insured shall have the right, but not the obligation, to satisfy on behalf of Tenant any self-insured retention or deductible amount. The limits of said insurance shall not limit any liability of Tenant hereunder. Not more frequently than every year, if, in the reasonable opinion of Landlord, the amount of liability insurance required hereunder is not adequate, Tenant shall promptly increase said insurance coverage as required by Landlord.

3. Insurance Carried by Landlord. Landlord may maintain liability insurance in addition to, and not in lieu of the insurance required to be maintained by Tenant. Tenant shall not be named as an additional insured thereunder and such insurance shall be secondary to Tenant's insurance which is primary in all respects.

4. Workers' Compensation Insurance. Tenant shall carry Workers' Compensation insurance as required by law, including an employers' liability endorsement.

5. Other Insurance. Tenant shall keep in force throughout the Term: (a) Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 per accident; (b) Employers Liability with limits of \$1,000,000 each accident, \$1,000,000 disease policy limit, \$1,000,000 disease--each employee; (c) Business Interruption Insurance for 100% of the twelve (12) months actual loss sustained, and (d) Excess Liability in the amount of \$5,000,000. In addition, whenever Tenant shall undertake any Alterations, additions or improvements in, to or about the Premises ("Work") the aforesaid insurance protection must extend to and include injuries to persons and damage to property arising in connection with such Work, without limitation including liability under any applicable structural work act, and such other insurance as Landlord shall require; and the policies of or certificates evidencing such insurance must be delivered to Landlord prior to the commencement of any such Work. Tenant shall also obtain insurance sufficient to insure Tenant's furniture, fixtures, improvements, personal property, inventory and merchandise against casualty loss with up to one hundred percent (100%) of replacement value, and carry and pay the premiums or self-insure for full plate glass insurance on the Premises.

6. Waiver. So long as their respective insurers so permit, Tenant and Landlord hereby mutually waive their respective rights of recovery against each other for any loss fully insured by fire, extended coverage, All Risk or other property insurance now or hereafter existing for the benefit of the respective party but only to the extent of the net insurance proceeds payable under such policies. Each party shall obtain any special endorsements required by their insurer to evidence compliance with the aforementioned waiver.