



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: July 22, 2009

APPLICATION: **DEVELOPMENT AGREEMENT NO. DA09-0002, SOUTH MAIN SENIOR HOUSING PROJECT**

APPLICATION SUMMARY:

A request for a Disposition and Development Agreement between the Milpitas Redevelopment Agency and South Main Senior Lifestyle LLC involving the purchase of 5.94 acres and the 387 housing units including senior and multi-family phases.

LOCATION: 1504 -1620 S. Main Street (APN 86-22-027, 028, 033, 034, 041, and 042)

APPLICANT: Joseph Callahan Jr., South Main Senior Lifestyle LLC, 5674 Stoneridge Drive, Pleasanton, CA 94588

OWNER: Li Tang, Baystone Development LLC, 1649 S. Main St., Suite 103, Milpitas, CA 95035

RECOMMENDATION: **Staff recommends that the Planning Commission:**
1. Close the public hearing; and
2. Adopt Resolution No. 09-033 recommending authorization of execution of Disposition and Development Agreement to the City Council

PROJECT DATA:

General Plan/

Zoning Designation: Multi-family Residential, Very High Density / Multi-family Residential, Very High Density (R4)

Overlay District: Transit Oriented Development and Site and Architectural Overlays (TOD-S).

Specific Plan: Midtown Specific Plan

CEQA Determination: Pursuant to Sections 15168(c) and 15182 of the CEQA Guidelines, no further environmental documentation is required. The project falls within the scope of development considered in the Midtown Specific Plan Program EIR and involves a residential project undertaken pursuant to and in conformity to the Midtown Specific Plan.

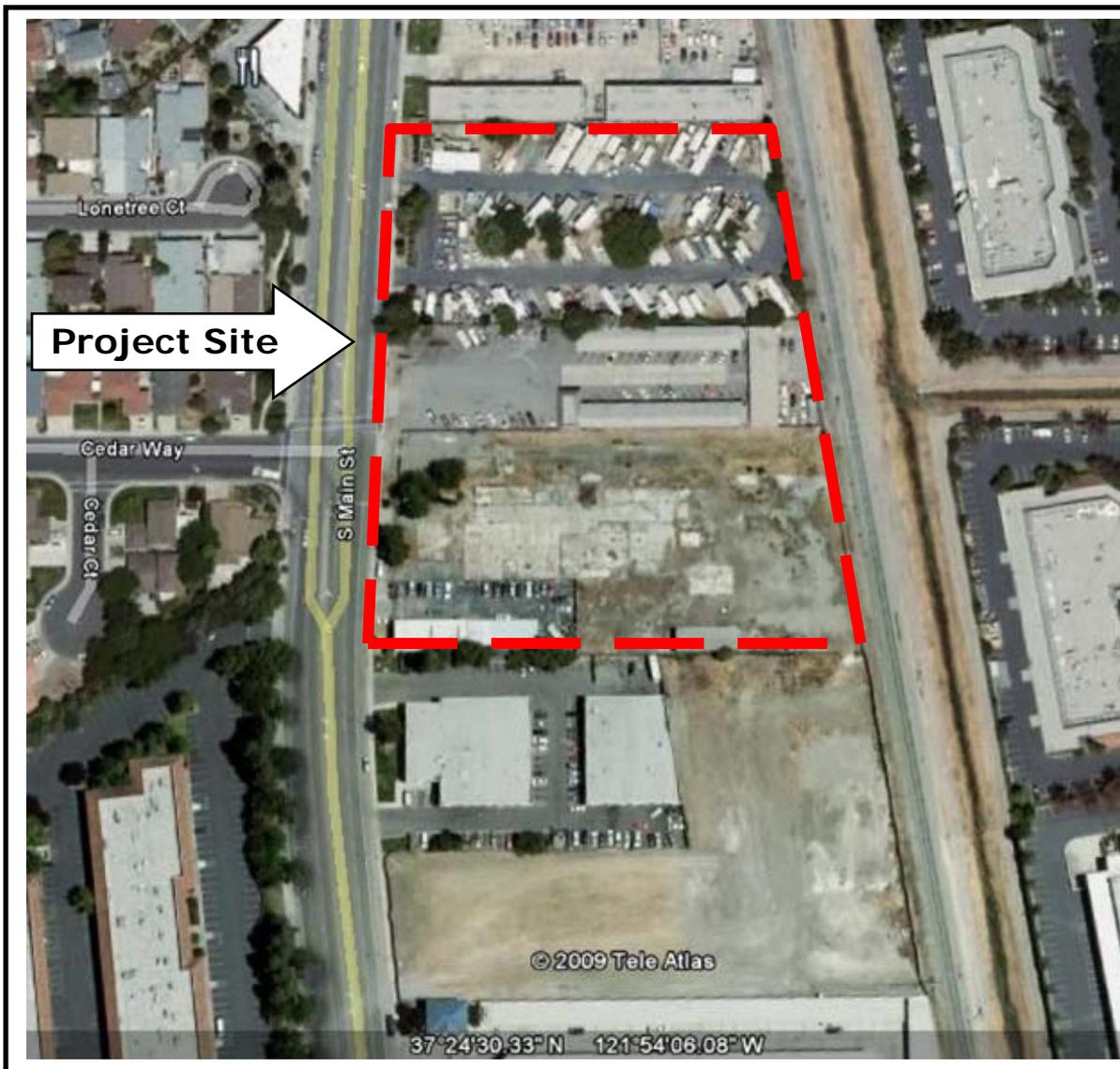
Site Area: 5.9 Acres

PLANNER: James Lindsay, Planning & Neighborhood Services Director

PJ: 2593

- ATTACHMENTS:
- A. Resolution/Conditions of Approval
 - B. Disposition and Development Agreement
 - C. Review of South Main Street Senior Housing Project (33433 Report)
 - D. Conceptual site plan

LOCATION MAP



No scale

BACKGROUND

On June 24, 2009, the Planning Commission approved an eighteen month time extension for Site Development Permit (SZ2007-18), Conditional Use Permit (UP2007-15), Density Bonus (DB08-0001) and Vesting Tentative Map (MI2007-2) that allowed for the construction of a 387 residential condominium project on a 5.94 acre site and associated site improvements.

On June 30, 2009, Joseph Callahan Jr. of South Main Senior Lifestyle LLC submitted an application for a Disposition and Development Agreement that proposes a two-phased residential complex that maintains the 387 residential units previously entitled and installation of related on and off-site improvements. A Disposition and Development Agreement is a contract between a developer and the Redevelopment Agency that amongst other things involves the sale of agency owned land, the provision of Agency financial assistance to the developer, and the imposition of covenants that run with the land. In addition to the DDA, the application is proposing modifications to the Site Development Permit and Tentative Map. These revisions will be reviewed as a separate application scheduled for a future Planning Commission meeting, included in the agenda packet as Attachment D is a conceptual site plan illustrating the develop pattern being envisioned.

PROJECT DESCRIPTION

The project consists of a DDA between the Milpitas Redevelopment Agency (RDA) and South Main Senior Lifestyle LLC (SMSL) involving the purchase by the RDA of 5.94 acres that consist of six parcels located at 1504 to 1620 S. Main Street. The project site is located at the northeast portion of the Main Street and Cedar Way intersection. Adjacent land uses includes multi-tenant quasi-commercial/industrial buildings with primarily auto-related service businesses to the north and south, Aspen Family Apartments to the southeast, industrial uses to the east, and single family homes to the west. An aerial photo of the project site is provided on the previous page. The following proposed milestones serve as the primary framework of the DDA:

<i>Project Milestone</i>	
<p>The RDA would purchase from Li Tang the 5.94 acres at a price not to exceed \$12.4 million</p>	<ul style="list-style-type: none"> ▪ The RDA would be completely reimbursed for funds it spent to remediate hazardous building materials and demolish existing structures on the site via a credit to the purchase price. The RDA’s total initial fiscal expenditure would therefore be \$12.4 million. This amount would be recouped by the RDA upon sale of the Property to the Developer in two phases.
<p>SMSL (the applicant) would purchase 1.94 acres (Phase 1) from the RDA for \$5 million within two years of the RDA purchasing the entire site. SMSL would construct 180 senior housing units on the Phase 1 site which would offer a continuum of services from independent to assisted living, 63 units of which would be affordable to lower income seniors.</p>	<ul style="list-style-type: none"> ▪ SMSL would be required to maintain the services package for independent and assisted living residents at all income levels (refer to Exhibit B Attachment 2 in the DDA) for the life of the Redevelopment Plan. Project Area No. 1. . ▪ The RDA would then provide financial assistance towards the development and operation of the affordable units in the form

<i>Project Milestone</i>	
	of a \$7.7 million grant.
SMSL would purchase the remaining site area (Phase 2) from the RDA within six years of the RDA purchase of the entire site. The Phase 2 site area would be used to construct 207 multi-family units with no age or income restrictions.	<ul style="list-style-type: none"> ▪ The price will be based on market value at the time of purchase but will be at least \$7.4 million which would enable the RDA to be reimbursed for the original \$12.4 purchase price of the 5.94 acres. All units in Phase 2 shall be “fair market” for sale units.

These main substantive points are reflected in the draft agreement included with the Planning Commission materials. Minor technical issues and language shall be finalized for the draft Disposition and Development Agreement that will be presented to the Redevelopment Agency Board (City Council).

Economic & Planning Systems has reviewed the draft DDA pursuant to California Government Code Section 33433 and found that the \$12.4 million purchase price represents the fair market value of the property at its highest and best use value (refer to Attachment C “Review of South Main Street Senior Housing Project”). Their review also concluded that the \$7.7 million RDA grant was necessary for the financial feasibility for the senior housing project given that 63 units (35%) will be made affordable at below market rates; 20% to very low income and 15% to low-income households.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 2
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-12</i> <i>Use zoning for new residential developments to encourage a variety and mix in housing types and costs.</i>	Consistent. The proposed project meets Policy 2.a-I-12 in that it provides for-sale, high density residential condominiums that the City does not currently have.
<i>2.a-G-3</i> <i>Provide for a variety of housing types and densities that meet the needs of individuals and families.</i>	Consistent. The proposed project meets Policy 2.a-G-3 by offering a unique and affordable housing that would help meet the needs of independent and dependent seniors, working people, and families that desire high quality, high density, residential communities that offer amenities that are within walking distance.
C-G-3: <i>Support Diversity and Creativity in Residential Development</i>	Consistent. The project proposes a senior housing and family housing residential community that offers an urban lifestyle.

Zoning Ordinance

The proposed senior and family housing is a permitted use and is consistent with surrounding land uses. Site and building modifications and revisions to the approved Tentative Map shall be review as separate permit for conformance with the Milpitas Zoning Ordinance.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of this project (approval of the disposition and development agreement) in accordance with the California Environmental Quality Act (CEQA). The proposed disposition and development agreement does not necessitate the conduct of additional CEQA review, pursuant to Section 15168(c) and 15182 of the CEQA Guidelines in that the proposed phasing and inclusion of senior housing could not lead to new effects or require new mitigation measures that were not already covered in the previous Program Environmental Impact Report for the Milpitas Midtown Specific Plan (State Clearinghouse No. 200092027) that was adopted and certified by the City Council on March 19, 2002, furthermore, the project provides for a residential project undertaken pursuant to and in conformity to the Midtown Specific Plan.

CONCLUSION

There are no facilities in the City that offer a package of continuum services for seniors allowing them to age in place within one location. Given the City's aging population, a project providing such services is highly desirably. The purchase price and financial assistance request is consistent with California Redevelopment Law and is necessary to ensure the project's feasibility. In addition, the project will also help achieve the RDA's objectives by creating approximately \$400,000 per year in additional property tax increment to the RDA. The entire project (Phases 1 & 2) would generate an estimated \$900,000 annually.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt the resolution recommending the City Council authorize execution of the South Main Senior Housing Lifestyle LLC Disposition and Development Agreement in the form or in substantially the same form as submitted to the Planning Commission

Attachments:

- A. Resolution
- B. Disposition and Development Agreement
- C. Review of South Main Street Senior Housing Project (Health & Safety Code section 33433 Report)
- D. Conceptual site plan

RESOLUTION NO. 09-033

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
MILPITAS, CALIFORNIA, RECOMMENDING THE MILPITAS CITY
COUNCIL AUTHORIZE EXECUTION OF A DEVELOPMENT
AGREEMENT FOR THE SOUTH MAIN SENIOR HOUSING PROJECT
LOCATED AT LOCATED AT 1504-1620 SOUTH
MAIN STREET.**

WHEREAS, on June 30, 2009, an application was submitted by Joseph Callahan Jr., South Main Senior Lifestyle LLC, Milpitas, CA 95035, for a Disposition and Development Agreement (DDA) to facilitate a two phased development resulting in 387 new housing units that would provide for 180 senior housing units and 207 housing units with no age restrictions for the property located at 1504 to 1620 South Main Street (APNs 086-22-027, 028, 033, 034, 041, and 042). The property is zoned Multi-Family Residential, Very High Density with a Transit Oriented Development and Site and Architectural overlay (R4-TOD-S); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project is exempt from further environmental review pursuant to Section 15182 (Residential Projects Pursuant to a Specific Plan) and Section 15168(c) (2) (Program EIR) of the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, on July 22, 2009, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The proposed project is exempt from further environmental review pursuant to Section 15182 (Residential Projects Pursuant to a Specific Plan) and Section 15168(c)(2) (Program EIR) of the California Environmental Quality Act (CEQA) Guidelines. The project entails a Disposition and Development Agreement to facilitate a two-phased residential development resulting in 387 residential units. The project is consistent with the activities and development considered in the Midtown Specific Plan Program EIR and is being undertaken pursuant to and in conformity with the Midtown Specific Plan.

Section 3: The proposed project is consistent with Guiding Policies and Implementing Principles 2.a-I-12 and 2.a-G-3 in that the it provides for-sale, high density residential condominiums that the City does not currently have and offers unique and affordable housing that would help meet the needs of independent and dependent seniors, working people, and families that desire high quality, high density, residential communities that offer amenities that are within walking distance.

Section 4: The project is consistent with the Zoning Ordinance in terms of land use and is compatible with surrounding uses.

Section 5: The Planning Commission of the City of Milpitas hereby recommends the City Council authorize the execution of the Disposition and Development Agreement in the form or in substantially the same form as that attached hereto as Exhibit 1, subject to the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on July 22, 2009.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on July 22, 2009, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	OTHER
Cliff Williams			
Lawrence Ciardella			
Alexander Galang			
Sudhir Mandal			
Gurdev Sandhu			
Noella Tabladillo			
Aslam Ali			
Mark Tiernan			

EXHIBIT 1

DRAFT DISPOSITION AND DEVELOPMENT AGREEMENT

Planning Commission Review
7/22/09

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

SOUTH MAIN SENIOR LIFESTYLE, LLC

Dated: August 18, 2009

Exhibits

- A Legal Description of the Property
- A-1 Legal Description of the Phase One Parcel
- A-2 Legal Description of the Phase Two Parcel
- A-3 Legal Description of the City Parcels
- B Scope of Development—Project Description
- C-1 Preliminary Site Plan
- C-2 Illustrative Revised Vesting Tentative Map
- D Schedule of Performance
- E-1 Financing Plan for Phase One Development
- E-2 Financing Plan for Phase Two Development
- F Form of Grant Deed
- G Form of Memorandum of Disposition & Development Agreement
- H Form of Phase One Regulatory Agreement
- I Form of Certificate of Completion
- J Assignment and Assumption Agreement

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into effective as of August 18, 2009 ("**Effective Date**") by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the "**Agency**") and South Main Senior Lifestyle, LLC, a California limited liability company (the "**Developer**"). Agency and Developer are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**."

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) ("**CRL**"), the Agency has responsibility to implement the redevelopment plan adopted in 1976 (as subsequently amended, the "**Redevelopment Plan**") by the City Council of the City of Milpitas, California (the "**City**") for the Milpitas Redevelopment Project Area No. 1 (the "**Project Area**") as more particularly described in the Redevelopment Plan.

B. The Agency seeks development of the property containing approximately 5.94 gross acres known as Santa Clara County Assessor's Parcel Nos. 086-22-027, 086-22-028, 086-22-033, 086-22-034, 086-22-041, and 086-22-042 located at 1504-1620 South Main Street and more particularly described in Exhibit A attached hereto (hereafter, the "**Property**"). The Property is located within the Project Area and the area governed by the Midtown Specific Plan ("**Specific Plan**"). Pursuant to an **Assignment and Assumption Agreement** entered into concurrently with this Agreement between the Agency and Callahan Property Company, Inc. ("**CPC**"), CPC has assigned, and the Agency has accepted, the rights and obligations of the buyer pursuant to that certain Purchase and Sale Agreement for the Property entered into as of April 15, 2009 between CPC and Bay Stone Developments, LLC (the "**Seller**"), the owner of the Property (as amended, the "**Purchase and Sale Agreement**"). A copy of the Assignment and Assumption Agreement is attached hereto as Exhibit J. As further provided in Recital E and in accordance with Section 1.3.4.2 hereof, the Property is intended to be subdivided prior to conveyance, resulting in the assignment of new Assessor's Parcel numbers.

C. The Developer proposes to develop a two-phased residential complex on the Property containing approximately three hundred eighty-seven (387) residential units, a new City street and other City rights-of-way, common use facilities, parking, landscaping and related on- and off-site improvements (the "**Project**"). The proposed Project is described in the Scope of Development (the "**Scope of Development**") attached hereto as Exhibit B, and depicted in the Preliminary Site Plan (including a detailed site plan for the entire Project and a conceptual elevation and conceptual parking plan for the Phase One Development (as defined below)) (the "**Preliminary Site Plan**") attached hereto as Exhibit C-1, and the Illustrative Revised Vesting Tentative Map (the "**Illustrative Revised VTM**") attached hereto as Exhibit C-2. As further described and depicted in the Scope of Development, the Preliminary Site Plan and the Illustrative Revised VTM, the Project will include the following two sequential phases:

1. The first phase residential development (the "**Phase One Development**") consisting of a one hundred eighty (180) unit "continuum of care" senior housing rental development and related amenities, parking, landscaping, and public street, utility and

infrastructure improvements. The Phase One Development will include sixty-three (63) residential units available at affordable housing cost to income-qualified very low and low income households (the "Affordable Units", as more fully described in the Scope of Development).

2. The second phase residential development (the "**Phase Two Development**") consisting of two hundred seven (207) units of family housing and related amenities, parking, landscaping and public street, utility, and infrastructure improvements.

As used in this Agreement, the term "**Development Phase**" means the Phase One Development or the Phase Two Development, as applicable.

D. The Property is currently entitled for development in accordance with a set of entitlements approved by the Milpitas City Council (the "**City Council**") pursuant to Resolution No. 7734 of February 5, 2008 (the "**Current Entitlements**", which include Vesting Tentative Map No. MI2007-0002 providing for the subdivision of the Property (the "**Current VTM**")). To facilitate the development of the Project, the Developer will seek certain modifications to the Current Entitlements for the Property in accordance with Section 1.3.4.1. The Current Entitlements, as may be revised pursuant to application of the Developer and approval by the City Council, are referred to herein as the "**Revised Entitlements**." The nature and scope of the anticipated Revised Entitlements to be sought by the Developer are summarized in the Scope of Development (Exhibit B), and include revisions to the Current VTM. The Current VTM, as may be revised pursuant to application of the Developer and approval of the City Council, is referred to herein as the "**Revised VTM**." The Illustrative Revised VTM (Exhibit C-2) sets forth the Parties' current conceptual understanding of the proposed parcel boundaries, phasing and other key features of the Revised VTM to be sought by Developer, and is subject to refinement through discussions between Developer, Agency and City.

E. To further facilitate the development of the Project, the Developer, with the cooperation of the Agency as provided in Section 1.3.4.2, will seek to cause the subdivision of the Property in accordance with the Revised VTM (generally in the manner depicted in the Illustrative Revised VTM attached as Exhibit C-2) and an accompanying final tract map consistent with the Revised VTM (the "**Final Map**") to establish the following parcels within the Property:

1. A private development parcel of approximately 1.94 net acres in the southern portion of the Property, generally as delineated in the attached Exhibit C-1 and C-2 (the "**Phase One Parcel**"), upon which the Phase One Development will be constructed and operated;
2. A private development parcel of approximately 2.86 net acres in the northern portion of the Property, generally as delineated in the attached Exhibit C-1 and C-2 (the "**Phase Two Parcel**"), upon which the Phase Two Development will be constructed and operated; and
3. City-owned parcels comprising the approximately 1.14-net acre balance of the Property, generally as delineated in the attached Exhibit C-1 and C-2 (the "**City Parcels**"),

which will contain the right-of-way for various public street, utility and related infrastructure improvements.

As used in this Agreement, the term "**Development Parcel**" means the Phase One Parcel or the Phase Two Parcel, as applicable.

F. In ____ 2002, the City Council certified a Program Environmental Impact Report ("**EIR**") for the Specific Plan (SCH #2000092027). Based on an environmental assessment for this Agreement and the proposed Project, it has been determined that this Agreement and the proposed Project are within the scope of the program of activities for which the environmental impacts were adequately addressed by the EIR. As a result, no new environmental document is required pursuant to the California Environmental Quality Act ("**CEQA**"), as provided in Section 15168(c)(2) of the State CEQA Guidelines, and this Agreement and the Project are also exempt from CEQA pursuant to California Government Code Section 65457.

G. The City Council and the Agency have each approved the disposition of the Phase One Parcel and the Phase Two Parcel as set forth in this Agreement, have followed all requisite procedures, and have adopted all requisite findings in connection with the foregoing, including without limitation the requirements of Sections 33431 and 33433 of the CRL.

H. The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the disposition and development of the Property as more particularly set forth herein. The Agency has determined that the development of the Property pursuant to this Agreement is consistent with the Specific Plan, the Redevelopment Plan and the Implementation Plan for the Project Area, will be of benefit to the Project Area, and will further the goals of the Redevelopment Plan by alleviating blight and providing affordable housing in the Project Area.

NOW THEREFORE, the Parties hereby agree as follows.

ARTICLE I

REPRESENTATIONS; CONDITIONS PRECEDENT TO PROPERTY CONVEYANCE

1.1 Developer's Representations. Developer represents and warrants to Agency as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.1 not to be true, Developer shall immediately give written notice of such fact or condition to Agency. Developer acknowledges that Agency shall rely upon Developer's representations made herein, notwithstanding any investigation made by or on behalf of Agency.

1.1.1 Authority; Limited Liability Company. Developer is a limited liability company duly organized and in good standing under the laws of the State of California. Developer has full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of

Developer have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Developer.

The sole members of Developer are Callahan Senior Living Associates III, LLC, a California limited liability company (the "**Callahan Member**"), whose managing member is Joseph W. Callahan ("**Callahan**"), and Collaborative Senior Living I, LLC, a California limited liability company (the "**Collaborative Member**"), whose managing member is James R. Burns II ("**Burns**"). The Callahan Member and the Collaborative Member are each limited liability companies duly organized and in good standing under the laws of the State of California. The Callahan Member, Callahan, the Collaborative Member and Burns are herein collectively referred to as the "**Developer Principals**" and individually referred to as a "**Developer Principal**."

1.1.2 No Conflict. 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 Developer is a party or by which it is bound.

1.1.3 No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

1.1.4 No Developer Bankruptcy. Developer is not the subject of a bankruptcy proceeding.

1.2 Agency Representations. Agency represents and warrants to Developer as follows, and Agency covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.2 not to be true, Agency shall immediately give written notice of such fact or condition to Developer. Agency acknowledges that Developer shall rely upon Agency's representations made herein, notwithstanding any investigation made by or on behalf of Developer.

1.2.1 Authority. Agency is a public entity duly organized and in good standing under the laws of the State of California. Agency has full right, power and authority to undertake all obligations of Agency as provided herein, and the execution, performance and delivery of this Agreement by Agency have been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Agency have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Agency.

1.2.2 No Conflict. Agency'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 Agency is a party or by which it is bound.

1.2.3 No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Agency to perform its obligations under this Agreement.

1.2.4 No Bankruptcy. Agency is not the subject of a bankruptcy proceeding.

1.3 Conditions Precedent. As a condition precedent to Agency's obligation to convey each Development Parcel to Developer, Developer must satisfy the requirements set forth in this Article I and in Article III with respect to the applicable Development Parcel within the times set forth in the Schedule of Performance attached hereto as Exhibit D (the "**Schedule of Performance**") unless such time is extended by the mutual agreement of Developer and the Agency acting in the discretion of its Executive Director. Developer and Agency, acting in the discretion of its Executive Director, may revise the Schedule of Performance from time to time by Operating Memorandum (as defined and described in Section 11.20) without formal amendment of this Agreement.

1.3.1 Financing Plan.

Within the time period set forth in the Schedule of Performance, Developer shall submit for Agency review Developer's plans for financing the acquisition of each Development Parcel and the construction and permanent financing of each Development Phase (a "**Financing Plan**"). The Financing Plan for each Development Phase shall indicate all sources of funds necessary to pay, when due, the estimated costs of development of that Development Phase, including without limitation acquisition costs and hard and soft construction costs, and shall be accompanied by evidence that all such funds have been firmly committed by Developer, equity investors or lending institutions, subject only to commercially reasonable conditions. The Financing Plan for each Development Phase shall include development and operating pro formas which set out in detail Developer's plan for financing the costs of acquisition, construction and operation of the applicable Development Parcel/Development Phase.

Agency staff shall promptly review each proposed Financing Plan, and acting through the Agency's Executive Director, the Agency shall approve such plan in writing within fifteen (15) business days following receipt provided that the plan conforms to the requirements of this Section 1.3.1. If the Agency does not approve a Financing Plan, the Agency shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit a revised Financing Plan that addresses the reasons for disapproval, and the Agency shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Financing Plan, subject to the outside time limits for completion set forth in Section 5.1 below. Agency's approval of a Financing Plan for a particular Development Phase shall be a condition precedent to Agency's obligation to convey the applicable Development Parcel for that Development Phase. The approved Financing Plans for the Phase One Development and the Phase Two Development shall be attached hereto as Exhibit E-1 and Exhibit E-2, respectively.

Developer shall submit any material revision to an approved Financing Plan to the Agency for its review and approval. Agency staff shall promptly review each proposed revised Financing Plan, and acting through the Agency's Executive Director, the Agency shall approve a revised Financing Plan in writing within fifteen (15) business days following receipt provided that the revised Financing Plan conforms to the requirements of this Section. If the Agency does not approve a revised Financing Plan, the Agency shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer may thereafter submit a revised Financing Plan that addresses the reasons for disapproval. Any revised Financing Plan that is

approved by the Agency shall thereafter constitute the approved Financing Plan for the applicable Development Phase, and a copy of such approved revised Financing Plan shall be attached hereto as a new Exhibit E-1 or Exhibit E-2, as applicable. Until a revised Financing Plan for a particular Development Phase is approved by the Agency, the previously approved Financing Plan shall govern the financing of that Development Phase.

1.3.1.1. Bond Financing For Phase One Development. Developer anticipates that, within the time set forth in the Schedule of Performance, it will submit an application to the California Debt Limit Allocation Committee ("**CDLAC**") for an allocation that would allow issuance of tax-exempt low income housing revenue bonds (the "**Bonds**") to assist in the financing of the costs of development of the Phase One Development. Upon award of such bond issuance authority from CDLAC (a "**CDLAC Award**"), Developer shall exercise diligent good faith efforts to arrange for issuance of the Bonds, including obtaining a purchase agreement from a reputable underwriter or lender to purchase the Bonds (a "**Bond Purchase Commitment**"). Procurement of a CDLAC Award and a Bond Purchase Commitment for the Phase One Development shall be conditions precedent to the Agency's obligation to convey the Phase One Parcel to Developer. Agency shall provide reasonable cooperation to Developer, without cost to Agency, to assist Developer in obtaining a CDLAC Award and a Bond Purchase Commitment, and in causing issuance of the Bonds. Upon request of Developer, Agency shall reasonably consider serving as the issuer of the Bonds, but is under no obligation to do so.

1.3.1.2. Tax Credit Funds. Developer anticipates that, within the time set forth in the Schedule of Performance, it will submit an application to the California Tax Credit Allocation Committee ("**TCAC**") for a preliminary tax credit reservation to assist in the financing of the costs of development of the Phase One Development. Upon award of a preliminary reservation from TCAC, Developer shall exercise diligent good faith efforts to obtain a funding commitment from a reputable equity investor to obtain tax credit syndication equity funds ("**Tax Credit Equity**"). Procurement of a TCAC preliminary reservation and an acceptable Tax Credit Equity funding commitment from equity investors for the Phase One Development shall be conditions precedent to the Agency's obligation to convey the Property to Developer. Agency shall provide reasonable cooperation to Developer, without cost to Agency, to assist Developer in obtaining a TCAC preliminary reservation and a funding commitment from equity investors for the Tax Credit Equity.

1.3.2 Evidence of Availability of Funds. No later than the date shown in the Schedule of Performance for each Development Phase, Developer shall submit to the Agency evidence reasonably satisfactory to Agency that (i) all conditions to the release and expenditure of the initial draw of funds described in the approved Financing Plan for the applicable Development Phase as the source of construction financing for that Development Phase have been met (or will be met upon conveyance of the applicable Development Parcel to Developer) and that such funds will be available upon conveyance of the applicable Development Parcel, (ii) all approvals, permits, and authorizations which are conditioned upon conveyance will be received promptly after conveyance, and (iii) all construction financing (including draws subsequent to the initial draw of funds) will be available upon conveyance of the applicable Development Parcel to Developer. Submission by Developer, and approval by the Agency, of such evidence of funds availability and evidence of issuance of all required approvals, permits and authorizations for a

particular Development Phase shall be a condition precedent to the Agency's obligation to convey the applicable Development Parcel to Developer.

1.3.3 Scope of Development and Preliminary Site Plan. Prior to the Agency's consideration of this Agreement, Developer submitted to the Agency a proposed Scope of Development for the Project in the form attached as Exhibit B and a proposed Preliminary Site Plan for the Project in the form attached as Exhibit C-1. The Scope of Development describes and the Preliminary Site Plan depicts the general location of the Phase One Development, the Phase Two Development, and related public improvements, including the location of the residential units, parking, open space, common areas, landscaping, street, and sidewalks. The Preliminary Site Plan also includes a conceptual elevation and a conceptual parking plan for the Phase One Development. On July 22, 2009, the Milpitas Planning Commission approved the Preliminary Site Plan and the Scope of Development. By execution of this Agreement the Agency hereby approves the Scope of Development and the Preliminary Site Plan.

1.3.4 Land Use Approvals; Cooperation. Developer acknowledges that the execution of this Agreement by Agency does not relieve Developer from the obligation to apply for and to obtain from City all necessary approvals, entitlements, and permits for the development of the Project (including without limitation approval of the Project in compliance with CEQA), nor does it limit in any manner the discretion of the City in the approval process. Prior to conveyance of each Development Parcel to Developer, Developer shall obtain all permits, licenses and approvals required for development of the applicable Development Phase, including without limitation, building permits. Agency staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for development of the Project. The conditions of approval imposed by the City in connection with any permits or approvals for the Project, including, without limitation, in connection with any grant of the Revised Entitlements as described in Section 1.3.4.1 below or the subdivision of the Property as described in Section 1.3.4.2 below, are hereinafter referred to as the "**Conditions of Approval.**"

1.3.4.1 Revised Entitlements. Within the time set forth in the Schedule of Performance, Developer shall submit an application to the City to obtain City consideration of the Revised Entitlements, including, without limitation, the Revised VTM and the Final Map. The Revised Entitlements sought by Developer shall be reasonably consistent with the revisions to the Current Entitlements generally described in the Scope of Development (Exhibit B) and in form to enable development of the Project generally as described and depicted in the Scope of Development, the Preliminary Site Plan (Exhibit C-1), and the Illustrative Revised VTM (Exhibit C-2). In addition, at Developer's election, the application for the Revised Entitlements may include (and if granted by the City the term "Revised Entitlements" shall be deemed to also include) a development agreement for the Project in accordance with California Government Code Section 65864 *et seq.*, and/or a final subdivision map with respect to the Phase Two Parcel only that would enable Developer to create a "condominium project" as defined in California Civil Code Section 1351(f), to subdivide the Phase Two Parcel, as authorized by California Government Code Section 66427 into "condominiums" as defined in California Civil Code Section 783, and to impose mutually beneficial restrictions under a general plan of improvements for the benefit of all the condominiums so created, all as contemplated by the Davis-Stirling Common Interest Development Act (a "**Phase Two Condominium Map**"). City approval of the

Revised Entitlements shall be a condition precedent to the Agency's obligation to convey any portion of the Property to Developer. If Developer does not seek City approval of a Phase Two Condominium Map as part of the Revised Entitlements, Developer may then seek City approval of such map at a subsequent time.

1.3.4.2 Subdivision of Property. Provided that the City has approved the Revised Entitlements, including, without limitation, the Revised VTM and the Final Map, and provided that all other conditions precedent to conveyance of the Phase One Parcel have been satisfied or waived, the Agency shall record, at the Developer's expense, the Final Map against the Property prior to conveyance of the Phase One Parcel, thereby creating the Phase One Parcel, the Phase Two Parcel, and the City Parcels. Upon filing and recording of the Final Map, the legal descriptions of the Phase One Parcel, the Phase Two Parcel, and the City Parcels shall be attached to this Agreement as Exhibit A-1, Exhibit A-2, and Exhibit A-3, respectively.

1.3.4.3 Permits and Fees. Developer shall be obligated to pay when due all customary and reasonable City fees and charges in connection with the processing of City permits and approvals.

1.3.4.4 Construction Plans. Prior to conveyance of the each Development Parcel, City shall have approved the Construction Plans for the applicable Development Phase pursuant to Article V.

1.3.5 Operator, Operating Agreement, and Services Plan For Phase One Development.

1.3.5.1 Operator and Operations Agreement. Within the time set forth in the Schedule of Performance, Developer shall submit for Agency review the proposed operator to operate the Phase One Development (the "**Operator**"), and the proposed agreement between Developer and the Operator for the operation of the Phase One Development (the "**Operations Agreement**"). In connection with such submission, Developer shall provide sufficient information to enable the Agency to reasonably determine the Operator's financial capacity and operating experience in operating similar "continuum of care" facilities.

Agency staff shall promptly review the identity and qualifications of the Operator and the terms of the Operating Agreement, and acting through the Agency's Executive Director, the Agency shall approve such Operator and Operating Agreement in writing within fifteen (15) business days following receipt provided that the following requirements are satisfied. The Agency shall approve the proposed Operator if, in the Agency Executive Director's reasonable determination, based on the information provided by Developer, such Operator has the necessary financial capacity and experience to satisfactorily operate the Phase One Development as a "continuum of care" facility in the manner contemplated by the Agency Documents. The Agency shall approve the proposed Operations Agreement if, in the Agency Executive Director's reasonable determination, such Operations Agreement provides for the Operator to operate the Phase One Development as a "continuum of care" facility in the manner contemplated by the Agency Documents, including providing the types of services and amenities to residents, without regard to income level, generally as described in the Scope of Development (Exhibit B) and any then approved Services Plan (as defined and described in Section 1.3.5.2) and providing the Affordable Units pursuant to and in accordance with the Phase One Regulatory Agreement.

If the Agency does not approve the Operator and/or the Operations Agreement, the Agency shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit revised information about the Operator or shall propose a different Operator and/or shall submit a revised Operating Agreement, as applicable, that addresses the reasons for disapproval, and the Agency shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to make such revised submission(s), subject to the outside time limit for completion set forth in Section 5.1 below. Agency's approval of the Operator and the Operations Agreement shall be a condition precedent to Agency's obligation to convey the Phase One Parcel.

Developer shall submit the identity and qualifications of any proposed new Operator, and/or any material revision to the approved Operations Agreement to the Agency for its review and approval. Agency staff shall promptly review the proposed new Operator and/or revised Operating Agreement, and acting through the Agency's Executive Director, the Agency shall approve the new Operator and/or the revised Operations Agreement in writing within fifteen (15) business days following receipt provided that the new Operator and/or the revised Services Plan conforms to the requirements of this Section. If the Agency does not approve the new Operator and/or the revised Operating Agreement, the Agency shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer may thereafter submit additional information about the new Operator or a different new Operator, and/or a revised Operating Agreement that addresses the reasons for disapproval. Any new Operator that is approved by the Agency shall thereafter be the Operator with respect to the Phase One Development. Any revised Operating Agreement that is approved by the Agency shall thereafter constitute the approved Operating Agreement for the Phase One Development. Until a new Operator and/or a revised Operating Agreement for the Phase One Development is approved by the Agency, the previously approved Operator and/or Operating Agreement shall remain and govern with respect to the operation of the Phase One Development.

1.3.5.2 Services Plan. Within the time set forth in the Schedule of Performance, Developer shall submit for Agency review Developer's plans for the provision of support services and amenities to the residents of the Phase One Development (the "Services Plan"). The Services Plan shall be generally consistent with the framework of services to residents of the Phase One Development that is summarized in the Scope of Development (Exhibit B).

Agency staff shall promptly review the proposed Services Plan, and acting through the Agency's Executive Director, the Agency shall approve such plan in writing within fifteen (15) business days following receipt provided that the plan conforms to the requirements of this Section 1.3.5. If the Agency does not approve the Services Plan, the Agency shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit a revised Services Plan that addresses the reasons for disapproval, and the Agency shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Services Plan, subject to the outside time limit for completion set forth in Section 5.1 below. Agency's approval of the Services Plan shall be a condition precedent to Agency's obligation to convey the Phase One Parcel.

Developer shall submit any material revision to the approved Services Plan to the Agency for its review and approval. Agency staff shall promptly review the proposed revised Services Plan, and acting through the Agency's Executive Director, the Agency shall approve the revised Services Plan in writing within fifteen (15) business days following receipt provided that the revised Services Plan conforms to the requirements of this Section. If the Agency does not approve the revised Services Plan, the Agency shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer may thereafter submit a revised Services Plan that addresses the reasons for disapproval. Any revised Services Plan that is approved by the Agency shall thereafter constitute the approved Services Plan for the Phase One Development. Until a revised Services Plan for the Phase One Development is approved by the Agency, the previously approved Services Plan shall govern with respect to the provision of support services for the Phase One Development.

1.3.6 Execution and Delivery of Documents. Developer shall execute, acknowledge as applicable, and deliver to Agency this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation a Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants with respect to the Affordable Units substantially in the form attached hereto as Exhibit H (the "**Phase One Regulatory Agreement**"), and a Notice of Affordability Restrictions On Transfer of Property for the Phase One Affordable Units (a "**Phase One Notice of Affordability**"), prepared in accordance with Health and Safety Code Section 33334.3(f)(3)(B). This Agreement, the Phase One Regulatory Agreement, the Phase One Notice of Affordability, the Grant Deed (as defined in Section 3.1 below) for each Development Parcel, and the Memorandum (as defined in Section 1.3.8 below) are hereinafter referred to collectively as the "**Agency Documents.**"

1.3.7 Insurance. Developer shall provide evidence reasonably satisfactory to Agency that Developer has obtained insurance coverage meeting the requirements set forth in Section 5.11 with respect to the applicable Development Parcel and Development Phase.

1.3.8 Purchase of Property; Memorandum. The Agency shall exercise diligent good faith efforts to purchase the Property in accordance with the terms of the Purchase and Sale Agreement. The Agency shall not permit an amendment of the Purchase and Sale Agreement without the prior written approval of Developer, which approval shall not be unreasonably withheld, conditioned or delayed so long as such amendment does not increase the Phase 1 Parcel Purchase Price (as defined in Section 3.2.1 below) and does not materially impair Developer's rights to develop the Property as contemplated by this Agreement. The date the Agency acquires the Property is hereinafter referred to as the "**Property Acquisition Date.**" Agency purchase of the Property in accordance with the Purchase and Sale Agreement shall be a condition precedent to conveyance of any portion of the Property to Developer. Developer and Agency shall execute and acknowledge a Memorandum of this Agreement ("**Memorandum**") substantially in the form attached hereto as Exhibit G, and Agency shall cause the Memorandum to be recorded in the Official Records of Santa Clara County following the Agency's purchase of the Property.

ARTICLE II

SITE PREPARATION WORK

This Article II sets forth the site preparation work performed or to be performed with respect to the Property prior to acquisition of the Property by the Agency pursuant to the Purchase and Sale Agreement and prior to conveyance of any portion of the Property to Developer pursuant to this Agreement. Except as expressly provided in this Article II, (i) no other site preparation work is anticipated or required to be performed with respect to the Property prior to conveyance of either Development Parcel to Developer, and (ii) as further provided in Section 4.2, each Development Parcel and the improvements thereon are to be conveyed to Developer in "AS IS" condition.

2.1 Demolition. As of the Effective Date, the City has completed [**or, is in the process of completing**] certain work to abate the public nuisance previously existing on the Property, including certain work to clear trash and debris and to demolish structures and improvements on the Property (the "**City Work**"). The City Work was [**or, is being**] performed pursuant to that certain License and Indemnification Agreement For City of Milpitas To Abate A Public Nuisance entered into between the City and the Seller as of May 8, 2009 (as amended, the "**Abatement Agreement**"). Among other matters, the Abatement Agreement provides a method for the City to recover its costs for the City Work (the "**City Abatement Costs**"). In turn, the Purchase and Sale Agreement provides for the repayment of the City Abatement Costs as between the Seller and the Agency (as the buyer) by way of a credit to the purchase price amount to be paid by the Agency for the Property pursuant to the Purchase and Sale Agreement (the "**Agency Purchase Price**") to fully reimburse the City for the cost of the City Work.

2.2 Hazardous Materials Remediation. This section sets forth the status and program for completion of efforts to investigate, characterize, and remediate certain Hazardous Materials (as that general term is defined in Section 4.4.4.1) present on or under the Property as of the Effective Date. The Hazardous Materials that have been identified, characterized and designated for remediation as described below are referred to as the "**Designated Hazardous Materials**." The work of remediating the Designated Hazardous Materials is referred to as the "**Remediation Work**."

2.2.1 Status of Remediation Work. The following primary actions have been completed or are underway with respect to the Remediation Work as of the Effective Date:

(1) In furtherance of the due diligence investigation pursuant to the Purchase and Sale Agreement, CPC and Developer have caused preparation by a licensed professional consultant of (a) a Phase II Environmental Site Assessment (the "Phase II ESA") which investigated, identified and characterized the Designated Hazardous Materials impairing the Property, and (b) a detailed work plan and budget (the "Work Plan") setting for the Remediation Work to remediate the Designated Hazardous Materials. The Agency and the Seller have received copies of, reviewed and provided input regarding the Phase II ESA and the Work Plan.

(2) With Developer's assistance, Seller has submitted the Phase II ESA, the Work Plan, and a Voluntary Cleanup Agreement and related documents to the California Department of Toxic Substances Control ("**DTSC**") and requested DTSC's review and approval of the Work Plan and Remediation Work.

(3) DTSC is in the process of its review and consideration of the proposed Work Plan and proposed Remediation Work, including receiving public comment and performing all other steps required under applicable laws.

2.2.2 Actions To Complete Remediation Work. Acting on behalf of itself, the Seller and the Agency, and in accordance with the further terms and conditions of the Purchase and Sale Agreement and the Assignment and Assumption Agreement, following the Effective Date Developer shall take the lead and shall use diligent good faith efforts to supervise and cause completion of the following primary actions to complete the Remediation Work:

(1) Procurement of DTSC approval of the Work Plan and Remediation Work (including any modifications to the proposed Work Plan and Remediation Work required by DTSC).

(2) Procurement of a contract with a qualified hazardous materials remediation contractor (the "**Remediation Contractor**") reasonably selected by Developer to perform the Remediation Work in accordance with the approved Work Plan.

(3) Performance and satisfactory completion by the Remediation Contractor of the Remediation Work in accordance with the approved Work Plan.

(4) Procurement from DTSC of an appropriate closure document indicating that the Remediation Work has been satisfactorily completed in accordance with the approved Work Plan and that the Designated Hazardous Materials have been remediated to a condition permitting development of the Project on the Property as contemplated by this Agreement.

The Parties acknowledge, and the Purchase and Sale Agreement provides, that the actions set forth above shall be completed prior to and as a condition of the Agency's obligation to purchase the Property from the Seller. Developer shall regularly inform the Agency regarding progress and next steps to complete the Remediation Work and the related actions set forth in this Section 2.2.2.

2.2.3 Payment Obligations. The Purchase and Sale Agreement sets forth the terms for payment and reimbursement for the actions taken or to be taken pursuant to this Section 2.2, as among the Seller, Developer, and the Agency, including the application of specified Agency Purchase Price deposits made in accordance with the Purchase and Sale Agreement to pay for the cost of actions taken pursuant to this Section 2.2.

ARTICLE III

DISPOSITION OF THE PROPERTY

3.1 Purchase and Sale of Development Parcels. Provided that all conditions precedent set forth in this Agreement have been satisfied or waived, Agency shall sell to Developer, and Developer shall purchase from Agency, the fee interest in each Development Parcel in accordance with and subject to the terms, covenants and conditions of this Agreement, free and clear of all recorded and unrecorded liens, encumbrances, restrictions, easements, assessments, leases and taxes except: (a) the provisions and effect of the Redevelopment Plan, (b) the provisions and effects of the Agency Documents that are applicable to the particular Development Parcel, (c) applicable building and zoning laws and regulations, (d) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed for the applicable Development Parcel, and (e) those additional title exceptions that encumbered the Property at the time the Agency purchased the Property in accordance with the Purchase and Sale Agreement. All of the foregoing are collectively hereinafter referred to as the "**Permitted Exceptions.**" Conveyance of each Development Parcel shall be effectuated by grant deed substantially in the form attached hereto as Exhibit F (the "**Grant Deed**").

3.2 Purchase Price.

3.2.1 Phase One Parcel Purchase Price. Agency shall sell the Phase One Parcel to Developer for the sum of Five Million Twenty-Two Thousand One Hundred Twenty-Nine Dollars (\$5,022,129) (the "**Phase One Parcel Purchase Price**"). The Parties acknowledge and agree that the Phase One Parcel Purchase Price equals the Phase One Parcel's prorata square footage share of the overall arms-length fair market value Agency Purchase Price to be paid by the Agency for the Property pursuant to the Purchase and Sale Agreement, including the Phase One Parcel's pro rata square footage share of the portion of the Agency Purchase Price attributable to the City Parcels portion of the Property.

3.2.2 Phase Two Parcel Purchase Price. Within the time set forth in the Schedule of Performance, the Parties shall initiate the procedure set forth in this Section to determine the purchase price for the Phase Two Parcel (the "**Phase Two Parcel Purchase Price**"). The Phase Two Parcel Purchase Price shall equal the greater of (1) the **Fair Market Value** (as defined and determined below) of the Phase Two Parcel as of the date that is one hundred twenty (120) days prior to the anticipated Closing Date for the Phase Two Parcel, or (ii) Seven Million Three Hundred Seventy-Seven Thousand Eight Hundred Seventy-One Dollars (\$7,377,871). In determining the Phase Two Parcel Purchase Price, the Phase Two Parcel shall be assumed to contain 3.54 acres, which includes the actual 2.86-net acre Phase Two Parcel to be conveyed by the Agency to Developer plus an additional 0.68-acre area comprising the Phase Two Parcel's pro rata square footage share of the City Parcels portion of the Property.

As used in this Section, "Fair Market Value" has the meaning given in California Code of Civil Procedure Section 1263.320. The Fair Market Value of Parcel Two shall be determined in accordance with the Uniform Standards of Professional Appraisal Practice then in effect, using the following procedure. [**Appraisal procedure to be inserted.**]

3.3 Escrow. Within the time set forth in the Schedule of Performance, Agency and Developer shall open escrow at the office of First American Title Company located in Pleasanton, California, or such other title company as the Parties may agree upon ("**Title Company**" or "**Escrow Agent**") in order to consummate the conveyance of each Development Parcel to Developer and the closing of escrow (each, a "**Closing**") for the transactions contemplated hereby.

3.4 Costs of Closing and Escrow. Developer shall pay all title insurance premiums for policies Developer elects to purchase in connection with the acquisition of each Development Parcel and the financing of each Development Phase and all conveyance and recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the conveyance of each Development Parcel and the financing of each Development Phase. Property taxes and assessments shall be prorated as of the date of Closing for the applicable Development Parcel ("**Closing Date**").

3.5 Escrow Instructions; Deposit of Funds; Recordation of Documents. Agency and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as Agency or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by Agency and Developer, shall serve as escrow instructions for the conveyance of each Development Parcel.

3.6 Closing Date. Within the time period set forth in the Schedule of Performance for each Development Parcel, Developer shall deposit into escrow the purchase price for that Development Parcel (determined in accordance with Section 3.2.1 or 3.2.2, as applicable), the balance of any other funds Developer is obligated to pay to Agency pursuant to this Agreement with respect to the Closing for that Development Parcel, and the Agency Documents applicable to that Development Parcel, executed and acknowledged as applicable. Provided that all conditions precedent to conveyance of the applicable Development Parcel have been satisfied or waived, Agency shall deposit into escrow the executed Grant Deed and executed copies of the other Agency Documents to which Agency is a party for that Development Parcel. On the Closing Date the Escrow Agent shall cause the Grant Deed for the applicable Development Parcel and the Phase One Regulatory Agreement (with respect to the Phase One Parcel Closing only) to be recorded in the Official Records of Santa Clara County.

3.6.1 Phase One Parcel Closing Date. The Closing Date for the Phase One Parcel shall be a date no later than twenty-four (24) months after the Property Acquisition Date (the "**Phase One Parcel Closing Deadline**") which is mutually acceptable to the Parties, and which shall occur within thirty (30) days following the Developer's satisfaction of all conditions precedent to conveyance of the Phase One Parcel as set forth in Articles I and III, including without limitation, Developer's receipt of all commitments for construction and permanent financing for the Phase One Development, including the Bonds and the Tax Credit Equity. The Phase One Parcel Closing Deadline may be extended by Operating Memorandum executed by the Parties in accordance with Section 11.20.

3.6.2 Phase Two Parcel Closing Date. The Closing Date for the Phase Two Parcel shall be a date no later than twenty-four (24) months after the issuance of the Certificate of Completion for the Phase One Development (the "**Phase Two Parcel Closing Deadline**") which

is mutually acceptable to the Parties, and which shall occur within thirty (30) days following the Developer's satisfaction of all conditions precedent to conveyance of the Phase Two Parcel as set forth in Articles I and III, including without limitation, Developer's receipt of all commitments for construction and permanent financing for the Phase Two Development. The Phase Two Parcel Closing Deadline may be extended by Operating Memorandum executed by the Parties in accordance with Section 11.20

3.7 Conditions to Closing. In addition to the conditions precedent to Closing set forth in Articles I and III, the Closing for conveyance of each Development Parcel is conditioned upon the satisfaction of the terms and conditions set forth in Sections 3.7.1 and 3.7.2.

3.7.1 Agency's Conditions to Closing. Agency's obligation to proceed with the Closing for conveyance of each Development Parcel is subject to Developer's satisfaction or Agency's waiver of the following conditions:

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

b. Representations. All representations and warranties of Developer contained herein or in any other Agency Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Closing for the applicable Development Parcel.

c. Execution and Recordation of Documents. Developer shall have executed and acknowledged the Memorandum, shall have acknowledged the Grant Deed, and shall have executed and acknowledged as applicable and delivered to escrow all other documents required in connection with the transactions contemplated by the Agency Documents for the applicable Development Parcel.

d. Authorization. Developer shall have provided Agency with certified copies of resolutions authorizing Developer's execution of the Agency Documents and such additional certificates as Agency shall reasonably require.

e. Satisfaction of Conditions Precedent. Developer shall have satisfied all of Developer's obligations set forth in Article I and III with respect to the applicable Development Parcel and Development Phase.

3.7.2 Developer's Conditions to Closing. Developer's obligation to proceed with the Closing for conveyance each Development Parcel is subject to satisfaction or Developer's waiver of the following conditions:

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

b. Execution of Documents. Agency shall have executed and acknowledged the Agency Documents and any other documents required hereunder with respect to conveyance of the applicable Development Parcel, and shall have delivered such documents into escrow.

c. Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an Owner's Title Insurance Policy for the benefit and protection of Developer ("**Title Policy**") showing title to the applicable Development Parcel vested in Developer, subject only to Permitted Exceptions.

d. Available Funding. The Developer has obtained the evidence of availability of all funds necessary to develop the applicable Development Phase on the applicable Development Parcel, as further provided in Section 1.3.2.

e. Revised Entitlements/Approvals. The City has granted the Revised Entitlements for the Project and all other permits and approvals necessary to develop the applicable Development Phase on the applicable Development Parcel, as further provided in Section 1.3.4.

ARTICLE IV

CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

4.1 Access to Site; Inspections. Agency shall provide Developer and Developer's representatives with access to the Property for the purpose of conducting surveys, obtaining data and making tests necessary to investigate the soils and environmental condition of the Property and the condition of the existing improvements. Agency may require Developer to execute a right of entry agreement satisfactory to Agency prior to entry onto the Property for such purpose. Developer's inspection, examination, survey and review of the Property shall be at Developer's sole expense. Developer shall provide Agency with copies of all reports and test results promptly following completion of such reports and testing. Developer shall repair, restore and return the Property to its condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Without limiting any other indemnity provisions set forth in this Agreement, Developer shall indemnify, defend (with counsel approved by Agency) and hold City and Agency and their respective elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively hereinafter 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 attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter "**Claims**") resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 4.1; provided, however, that Developer shall not have a liability or indemnification obligation to the extent any Claim arises merely from discovery by Developer of an existing fact or conditions related to the Property so long as Developer does not

exacerbate the condition. Developer's indemnification obligations set forth in this Section 4.1 shall survive the Closing for each of the Development Parcels and the termination of this Agreement.

4.2 AS-IS Sale. Developer acknowledges and agrees that: (i) prior to the Closing Date for each Development Parcel, in Developer's discretion, Developer shall inspect the Property and the improvements located thereon, and shall examine the legal, environmental, zoning, land use, seismic, title, survey and physical characteristics and condition thereof; (ii) by acquiring a Development Parcel, Developer shall be deemed to have approved of all such characteristics and conditions; (iii) except as expressly provided in Article II, each Development Parcel and the improvements thereon are to be conveyed to, and accepted by Developer in their present condition "AS IS," "WHERE IS" AND WITH ALL FAULTS with no warranty expressed or implied regarding the condition of the soil, its geology, or the presence of known or unknown faults or Hazardous Materials, and no patent or latent defect or deficiency in the condition of the applicable Development Parcel or the improvements thereon whether or not known or discovered, shall affect the rights of either Agency or Developer hereunder. Developer shall rely solely upon its own independent investigation concerning the physical condition of each Development Parcel and its compliance with applicable statutes, ordinances, rules and regulations. Agency shall have no responsibility for site preparation, demolition, or any other removal or replacement of improvements on the Property, except as expressly provided in Article II.

If following conveyance of a Development Parcel, the condition of the applicable Development Parcel is not in all respects entirely suitable for the uses to which that Development Parcel will be put pursuant to this Agreement, then it shall be the sole responsibility and obligation of Developer to correct any soil, subsurface or structural conditions, demolish any improvements, and otherwise put the applicable Development Parcel in a condition suitable for the applicable Development Phase to be constructed pursuant to this Agreement. Except as expressly provided in Article II and except to the extent such costs are related to Hazardous Materials known to Agency but not disclosed to Developer, Developer hereby waives any right to seek reimbursement from the Agency for costs Developer incurs in connection with the correction of any physical condition on the Development Parcels.

4.3 Release of Claims. Developer hereby waives, releases and discharges forever Indemnitees from all present and future Claims arising out of or in any way connected with the condition of the Property, any Hazardous Materials on, under, in or about the Property, or the existence of Hazardous Materials contamination due to the generation of Hazardous Materials from the Property, however they came to be placed there, except that arising out of the gross negligence or willful misconduct of Indemnitees.

Developer is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides:

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

As such relates to this Section 4.3, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Developer Initials

4.4 Developer's Post-Closing Obligations; Environmental Indemnification.

4.4.1 Developer's Covenants. Developer hereby covenants and agrees that:

(1) Developer shall not knowingly permit the Project or the Property or any portion of either 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 Project or the Property with the exception of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential property and used, stored and disposed of in compliance with Hazardous Materials Laws.

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

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

(4) Without the Agency's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, Developer shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the Agency agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim.

4.4.2 Environmental Indemnity. Developer shall indemnify, defend (with counsel approved by Agency) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws.

4.4.3 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 4.4.2 above, are in no way limited or otherwise affected by any information the Agency or the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the Agency or the City obtained such information from the Developer or from its own investigations, unless such information was known to the Agency or the City at the time of execution of this Agreement and/or the time of the Closing for the conveyance of the respective Development Parcels to the Developer but not disclosed to Developer.

4.4.4 Definitions.

4.4.4.1 Hazardous Materials. As used herein, "**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended.

4.4.4.2 Hazardous Materials Laws. As used herein “**Hazardous Materials Laws**” means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 4.4.4.1, as they may be amended from time to time.

4.4.4.3 Project and Property. For the limited and exclusive purposes of this Section 4.4, the terms "Project" and "Property" shall not include the City Parcels, because Developer will not control or be responsible for operating and maintaining the City Parcels.

ARTICLE V

DEVELOPMENT OF THE PROJECT

5.1 Schedule of Performance. Developer shall commence and complete construction of each Development Phase and shall satisfy all other obligations of Developer under this Agreement within the time periods set forth in the Schedule of Performance except as such time periods may be extended upon mutual written consent of the Agency and the Developer or by operation of Section 11.2. Developer and Agency, acting in the discretion of its Executive Director, may revise the Schedule of Performance from time to time by Operating Memorandum (as defined and described in Section 11.20) without formal amendment of this Agreement. Without limiting the foregoing, Developer shall commence construction of each Development Phase within thirty (30) days following conveyance of the applicable Development Parcel to Developer, and shall diligently prosecute to completion the construction of each Development Phase sufficient to allow City issuance of a final certificate of occupancy within the time periods set forth in the Schedule of Performance, subject to the operation of Section 11.2. Each Party shall use diligent and commercially reasonable efforts to perform the obligations to be performed by such Party pursuant to this Agreement within the times periods set forth herein, and if no such time is provided, within a reasonable time, designed to permit issuance of a final certificate of occupancy for each Development Phase by the times specified in this Section 5.1.

5.2 Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall pay all of Developer’s direct and indirect costs and expenses incurred in connection with the acquisition of each Development Parcel, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. Except as expressly set forth herein, all costs of designing, developing and constructing the Project and compliance with the Project approvals, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Developer and shall not be an obligation of the Agency. Without limiting the generality of the foregoing, Developer shall design and construct at Developer’s expense any lateral connections to public utilities which are necessary to provide water, sewer and storm drain service to the Property.

5.3 Construction Plans. Developer shall submit to City’s Building Department detailed construction plans for each Development Parcel (the “**Construction Plans**”) within the time period specified in the Schedule of Performance. As used herein, “**Construction Plans**” means all construction documentation upon which Developer and Developer's contractors shall rely in constructing the applicable Development Phase (including landscaping, parking, common and

public areas) and shall include, without limitation, final architectural drawings, the site development plan, landscaping plans and specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the approved Scope of Development, the Preliminary Site Plan, the Revised Entitlements, the other approvals for the applicable Development Phase including the Conditions of Approval, and any other plans or development approvals issued by the City, and shall not materially deviate therefrom without the express written consent of Agency. Provided that the Construction Plans for a Development Phase are consistent with the requirements of this Agreement, approval of the Construction Plans by City shall be deemed approval thereof by Agency.

5.4 Permits and Approvals. Within thirty (30) days following Developer's receipt of City approval of the Construction Plans for each Development Phase, Developer shall apply for and make commercially reasonable efforts to obtain issuance of all necessary building permits for that Development Phase. Agency staff shall render all reasonable assistance to Developer to obtain such building permits. Developer shall pay the City's usual and customary plan check and permit fees. Developer shall be responsible for acquisition and maintenance of all permits, licenses and other authorizations required in connection with construction of each Development Phase.

5.5 Construction Plans Must Be Approved; Construction in Accordance with Plans and Approvals. Developer shall not commence construction of a Development Phase until Developer has received written approval of the Construction Plans for that Development Phase by the City Building Department. Developer shall construct each Development Phase in accordance with the approved Construction Plans and all other permits and approvals granted by the City and/or the Agency pertaining to development of that Development Phase. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

5.6 Change in Construction Plans. If Developer desires to make any material change in the Construction Plans for a Development Phase, Developer shall submit the proposed changes to the Agency and City for approval, which approval shall not be unreasonably withheld, conditioned or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement, the Scope of Development, the Revised Entitlements, and the Conditions of Approval. Unless such proposed change is rejected within fifteen (15) days, Agency shall be deemed to have approved such change. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect.

Any change in the Construction Plans required in order to comply with applicable law shall be deemed approved, so long as such changes do not substantially, nor materially, change the architecture, design, function, use, or other amenities of the applicable Development Phase as shown on the latest approved Construction Plans for that Development Phase.

5.7 Defects in Plans. Neither Agency nor City shall be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved by Agency) and hold harmless the Indemnitees from and against any Claim for damage to property or injury to or death of any person arising out of or in any way relating to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section 5.7 shall survive the termination of this Agreement and the recordation of a Certificate of Completion for the applicable Development Phase. It is further agreed that Agency and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Developer's deposit with Agency of any of the insurance policies described in this Agreement.

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

5.9 Prevailing Wages. Developer shall carry out and shall cause its contractors to carry out the construction of the Project in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards. To the extent applicable to the Project, Developer and its subcontractors and agents, shall comply with California Labor Code Section 1720 et seq. and regulations adopted pursuant thereto ("**Prevailing Wage Laws**") and shall be responsible for carrying out the requirements of such provisions. This Agreement has been prepared with the intention that the Agency assistance under this Agreement meets the exception set forth in California Labor Code Section 1720(c)(4) to the general requirement that prevailing wages be paid in connection with construction work that is paid in whole or in part out of public funds; provided, however, that nothing in this Agreement constitutes a representation or warranty by either Party regarding the applicability of the Prevailing Wage Laws.

Developer shall, and hereby agrees to indemnify, defend (with counsel approved by Agency), protect and hold harmless the Indemnitees from and against any and all Claims whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Agency, City or Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold

harmless agreement because of the acceptance by Agency or City, or Developer's deposit with Agency of any of the insurance policies described in this Agreement.

5.10 Performance and Payment Bond(s).

(a) Within the time specified in the Schedule of Performance for each Development Phase, Developer shall deliver to the Agency 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 that Development Phase. The bonds shall name the Agency and the City as co-obligees.

(b) In lieu of such performance and payment bonds, Developer may submit evidence satisfactory to the Agency of the Developer's ability to commence and complete construction of the applicable Development Phase 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 Agency required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to Agency. Such evidence must be submitted in approvable form in sufficient time to allow the Agency to review and approve the information within the time specified in the Schedule of Performance.

5.11 Insurance Requirements.

5.11.1 Phase One Development. The insurance requirements for the Phase One Parcel and the Phase One Development shall be as set forth in Exhibit B to the Form of Phase One Regulatory Agreement (which is attached hereto as Exhibit H).

5.11.2 Phase Two Development. The insurance requirements for the Phase Two Parcel and the Phase Two Development shall be as set forth in this Section 5.11.2.

Prior to initiating work on the Phase Two Development and continuing through the issuance of the Certificate of Completion, Developer and all contractors working on behalf of Developer on the Phase Two Development shall maintain a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit, or such other policy limit as Agency 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 City and Agency as additional insureds.

Until issuance of the Certificate of Completion for the Phase Two Development, Developer and all contractors working on behalf of Developer with respect to the Phase Two Development shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to Agency evidence satisfactory to Agency that Developer and any contractor with whom Developer has contracted for the performance of work on the Phase Two Development or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name City and Agency as additional insureds.

Until issuance of a Certificate of Completion for the Phase Two Development, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Phase Two Development on a replacement cost basis naming Agency as loss payee. Upon completion of construction of the Phase Two Development, Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Phase Two Development with deductible, if any, in an amount acceptable to Agency, naming Agency as loss payee.

Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name City and Agency and their respective officers, officials, agents, employees, and representatives as additional insureds. Builder's Risk and property insurance shall name Agency and City as loss payees as their interests may appear. Prior to commencement of construction for the Phase Two Development, Developer shall furnish Agency with certificates of insurance in form acceptable to Agency 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 and Agency of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal. Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Agency or City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City and Agency. Developer shall furnish the required certificates and endorsements to Agency within the time provided in the Schedule of Performance, and shall provide Agency with certified copies of the required insurance policies upon request of Agency.

5.12 Certificate of Completion. Promptly after completion of construction of a particular Development Phase in accordance with this Agreement and upon City's issuance of a certificate of occupancy for that Development Phase, upon request of Developer, the Agency will provide an instrument so certifying, in substantially the form attached hereto as Exhibit N ("**Certificate of Completion**"). Such Certificate of Completion shall constitute conclusive determination of satisfactory completion of construction of the applicable Development Phase. Such Certificate of Completion for a Development Phase shall be in such form as will enable it to be recorded among the official records of Santa Clara County. The Certification of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance that Development Phase or any part thereof, shall not be deemed a notice of completion under the California Civil Code, and shall not be deemed a determination that the obligations of Developer which continue beyond the completion of construction (including without limitation the obligations imposed pursuant to Article VI hereof) have been fulfilled.

5.13 Compliance with Laws. Developer shall carry out the construction of the Project in conformity with all applicable state, local and federal laws, ordinances, rules and regulations, including all applicable state and federal labor laws and standards, applicable provisions of the California Public Contracts Code, 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.

5.14 Indemnity. Developer shall defend (with counsel approved by Agency), indemnify and hold harmless the Indemnitees from and against any and all present and future Claims arising from or in connection with Developer's failure to comply with all applicable laws and regulations relating to the construction of the Project, including, without limitation, all applicable federal and state labor laws and standards, or in any other manner relating to development of the Project, or Developer's activities or performance under this Agreement whether such activities or performance be by Developer or by anyone directly or indirectly employed or contracted with by Developer and whether such Claim shall accrue or be discovered before or after termination of this Agreement. Developer's indemnity obligations under this Section 5.14 shall not extend to Claims resulting solely from Indemnitees' gross negligence or willful misconduct.

5.15 Liens and Stop Notices. Until the expiration of the term of the Phase One Regulatory Agreement with respect to the Phase One Development and the Phase One Parcel, and until issuance of a Certificate of Completion with respect to the Phase Two Development and the Phase Two Parcel, Developer shall not allow to be placed on the applicable Development Parcel 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 a particular Development Parcel within the applicable period set forth in the preceding sentence, Developer shall within twenty (20) days of such recording or service: (a) pay and discharge the same; or (b) effect the release thereof by recording and delivering to the party entitled thereto a surety bond in sufficient form and amount or provide other assurance satisfactory to Agency that the claim of lien or stop notice will be paid or discharged.

5.16 Right of Agency to Satisfy Liens on the Property. After the conveyance of a Development Parcel, if Developer fails to satisfy or discharge any lien or stop notice on that Development Parcel pursuant to Section 5.15 above, the Agency 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. In such event Developer shall be liable for and shall immediately reimburse Agency for such paid lien or stop notice. Alternatively, the Agency may require Developer to immediately deposit with Agency the amount necessary to satisfy such lien or claim pending resolution thereof. The Agency 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 of the applicable Development Phase 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 applicable Development Parcel or Development Phase. The Agency may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Agency deems necessary or desirable to protect its interest in the Property and the improvements thereon.

5.17 Agency Rights of Access. Developer shall permit the Agency through its officers,

agents, or employees, during normal business hours, and accompanied by a representative of the Developer, to enter into the Project following 24-hours written notice from the Agency (except in the case of emergency in which case Agency shall provide such notice as may be practical under the circumstances) (a) to inspect the works of construction to determine that the same is in conformity with the requirements of this Agreement and the Agency Documents, and (b) following completion of construction, to inspect the ongoing operation and management of the Project to determine that the same is in conformance with the requirements of this Agreement.

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

ARTICLE VI

USE OF THE PROPERTY

6.1 Uses. Developer covenants and agrees for itself and its successors and assigns that each Development Parcel shall be used for the purposes specified in the Redevelopment Plan, the Specific Plan and this Agreement. Except as provided otherwise in this Agreement, the conditions set forth in this Agreement with respect to each Development Parcel shall apply until a Certificate of Completion is issued for that Development Parcel; provided however, (i) the covenants against discrimination specified in Section 6.5 of this Agreement shall be perpetual, (ii) the covenants pertaining to use and maintenance of each Development Parcel and each Development Phase shall be in effect for the duration of the Redevelopment Plan and the Specific Plan, and (iii) the covenants regarding provision of the Affordable Units in the Phase One Development specified herein and in the Phase One Regulatory Agreement shall remain in effect for a term of fifty-five (55) years, commencing upon the issuance of a final certificate of occupancy for the Phase One Development.

6.2 Affordable Senior Housing. For a term of fifty-five (55) years commencing upon the issuance of a final certificate of occupancy for the Phase One Development, the Phase One Parcel and the Phase One Development shall be used solely for a senior housing project in which at least sixty-three (63) residential units shall be available as Affordable Units pursuant to and in accordance with the Phase One Regulatory Agreement.

6.3 Maintenance. Developer shall maintain each Development Parcel and each Development Phase, including related landscaping and common areas, in accordance with the Milpitas

Municipal Code in a manner consistent with community standards, and shall comply with all applicable federal, state and local laws and regulations pertaining thereto. Developer covenants that prior to completion of each Development Phase, the applicable Development Parcel undergoing construction shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards. Developer shall maintain each Development Parcel and each Development Phase in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, and landscaping, and from time to time make all necessary and proper repairs, renewals and replacements.

In the event that there arises at any time prior to the expiration of the term of the Phase One Regulatory Agreement with respect to Phase One Parcel and Phase One Development, or prior to the expiration of the effectiveness of the Redevelopment Plan with respect to the Phase Two Parcel and the Phase Two Development, a condition in contravention of the above maintenance standard, then Agency shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to cure such condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the Agency shall have the right to perform all acts necessary to cure such condition, or to pursue such other remedy available to Agency and to receive from the Developer the Agency's cost in taking such action. The parties further mutually understand and agree that the rights conferred upon the Agency expressly include the right to enforce or establish a lien or other encumbrance against the Phase One Parcel or the Phase Two Parcel, as applicable. The foregoing provisions shall be a covenant running with the land until the expiration of the respective period for each Development Parcel as set forth in the first sentence of this paragraph, enforceable by the Agency, its successors and assigns. Nothing in the foregoing provisions shall preclude the Developer from making any alterations, additions, or other changes to a particular Development Phase, provided that such changes comply with this Agreement and the approved Construction Plans, and with all necessary land use, building permits, and other approvals from the City.

6.4 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Development Parcels, or payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the applicable Development Parcel; provided, however, that the Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

6.5 Non-Discrimination and Mandatory Language in All Subsequent Deeds, Leases and Contracts. Developer covenants by and for itself and its successors and assigns that 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 disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project or the Property, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the

selection, location, number, use, occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenants shall run with the land. All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property or the improvements therein shall contain 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)."

ARTICLE VII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capability and expertise of Developer and its principals are of particular concern to the Agency. It is because of those qualifications, experience, financial capability and expertise that the Agency has entered into this Agreement with Developer. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as hereinafter provided.

7.2 Prohibition on Transfer. Prior to the expiration of the term of the Phase One Regulatory Agreement, Developer shall not, except as expressly permitted by this Agreement or the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development only), directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively "**Transfer**") of the whole or any part of the Property, the Project, or this Agreement without the prior written approval of the Agency which the Agency may withhold in its sole and absolute discretion. Any such attempt to assign this Agreement without the Agency's consent shall be

null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Phase One Regulatory Agreement, except as expressly permitted by this Agreement or the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development only), Developer shall not undergo any **Significant Change of Ownership** without the prior written approval of Agency. For purposes of this Agreement, a "Significant Change of Ownership" shall mean a transfer of the beneficial interest of more than forty-nine percent (49%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis. As used in this Agreement and the Phase One Regulatory Agreement, the term "Transfer" shall include a Significant Change of Ownership.

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent the following transactions, and the following transactions are hereby authorized and permitted (collectively, the "**Permitted Transfers**"):

- (a) The granting of temporary easements or permits to facilitate development of the Project;
- (b) The dedication of any property required pursuant to this Agreement or the Project approvals, including without limitation the Revised Entitlements and the Conditions of Approval;
- (c) the lease of individual residences to tenants for occupancy as their principal residence;
- (d) With respect to the Phase Two Development only, the sale of residential condominium units in accordance with an approved and recorded Phase Two Condominium Map and all applicable legal requirements for such sale;
- (e) Assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or any portion thereof pursuant to the applicable approved Financing Plan (subject to the requirements of Article VIII) or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest;
- (f) Assignments creating security interests in a Development Parcel and Development Phase following issuance of a Certificate of Completion for that Development Parcel and Development Phase or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest;
- (g) A Significant Change of Ownership consisting of an adjustment of the membership ownership percentages among the Developer Principals;
- (h) A Significant Change of Ownership consisting of the admission of one or more additional members in Developer so long as:

(1) each such member is admitted either as an equity investor in Developer consistent with the applicable approved Financing Plan, or as an operator for the Phase One Development;

(2) one or more of the Developer Principals remain as managing member or co-managing members of Developer; and

(3) Developer notifies the Agency not less than sixty (60) days prior to the proposed Significant Change in Ownership of such change, and the Agency's Executive Director approves such Significant Change of Ownership, which approval shall not be unreasonably withheld, conditioned or delayed, and which approval shall be deemed granted unless disapproved in writing (stating with specificity the reasons for such disapproval) within thirty (30) days of receipt of Developer's notice.

(i) With respect to the Phase One Parcel and the Phase One Development only, any Transfer consistent with Section 8.1 or Section 8.2 of the Form of Phase One Regulatory Agreement attached hereto as Exhibit H, regardless of whether such Transfer occurs prior to or following execution and recordation of the Phase One Regulatory Agreement.

(j) A Transfer of all of Developer's right, title and interest in and to the Phase Two Parcel, the Phase Two Development and the rights and obligations of Developer under this Agreement related thereto, to another legal entity (a "Phase Two Development Transferee") so long as:

(1) based upon the information submitted by Developer and any other information made available to the Agency, the Agency Executive Director reasonably determines that, following the proposed Transfer, the Phase Two Development Transferee will be of sound reputation and will have sufficient financial strength and management and operating capacity and expertise (A) to successfully operate, manage and maintain the Phase Two Parcel and the Phase Two Development in a manner consistent with the quality of operation, management, and maintenance performed at other comparable family housing developments in the San Francisco Bay Area, and (B) to fully perform and comply with all terms of this Agreement with respect to the Phase Two Parcel and the Phase Two Development;

(2) the Phase Two Development Transferee expressly assumes all of the rights and obligations of the Developer under the Agency Documents with respect to the Phase Two Parcel and the Phase Two Development arising after the effective date of the Transfer and all such obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations); and

(3) the Transfer is effectuated pursuant to a written instrument satisfactory to the Agency in form recordable in the Official Records of Santa Clara County.

Developer shall notify the Agency not less than sixty (60) days prior to a proposed Transfer pursuant to this paragraph (j). The Agency's Executive Director shall approve or disapprove the proposed Transfer within thirty (30) days of receipt of Developer's notice.

Such approval shall not be unreasonably withheld, conditioned or delayed, and shall be deemed granted unless disapproved in writing (stating with specificity the reasons for such disapproval) within thirty (30) days of receipt of Developer's notice.

(k) Any Transfer of all of Developer's right, title and interest in and to the Phase Two Parcel, the Phase Two Development and the rights and obligations of Developer under this Agreement related thereto that occurs after the expiration of the effectiveness of the Redevelopment Plan, which Transfer shall not require prior approval of the Agency or compliance with any other condition.

Upon request of Developer, the Agency shall provide confirmation in form reasonably acceptable to Developer that a particular Permitted Transfer meeting the requirements and conditions of this Section 7.3 has occurred and is recognized as a Permitted Transfer under this Agreement.

7.4 Requirements for Other Proposed Transfers. The Agency may, in the exercise of its sole discretion, approve a Transfer of this Agreement, the Property or portion thereof only if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Permitted Transfers described in Section 7.3):

(i) The proposed transferee demonstrates to the Agency's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Agency to competently complete construction of the Project (or applicable portion thereof) and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(ii) The Developer and the proposed transferee shall submit for Agency 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 Agency may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under the Agency Documents which are applicable to the Transfer 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).

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Agency in form recordable in the Official Records of Santa Clara County.

Consent to any proposed Transfer pursuant to this Section 7.4 may be given by the Agency's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Agency's governing board.

7.5 Effect of Transfer without Agency Consent.

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

7.5.2 If, in violation of this Article VII, the Developer Transfers all or any part of the Property or the improvements thereon prior to the recordation of the Certificate of Completion for the applicable Development Parcel and Development Phase, the Agency 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 paid by the Developer to the Agency for the applicable Development Parcel, and (b) the costs incurred by Developer in connection with the improvement and development of the applicable Development Phase, including carrying charges, interest, fees, taxes, assessments and escrow fees. Such excess consideration shall belong to and be paid to the Agency by the Developer and until so paid, the Agency shall have a lien on the applicable Development Parcel and Development Phase for such amount. The provisions of this Section 7.5.2 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. Following recordation of the Certificate of Completion for the applicable Development Parcel and Development Phase, the provisions of this Section 7.5.2 shall have no further force and effect.

7.5.3 Without limiting any other remedy Agency may have under this Agreement, or under law or equity, this Agreement may be terminated by Agency with respect to the affected Development Parcel and Development Phase if, in violation of this Article VII, Developer assigns or Transfers this Agreement or the Property prior to the Agency's issuance of a Certificate of Completion for such Development Parcel and Development Phase.

ARTICLE VIII

FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust or any other reasonable security instrument are permitted to be placed on a Development Parcel prior to issuance of the Certificate of Completion with respect to that Development Parcel, but only for the purpose of securing loans approved pursuant to the applicable approved Financing Plan for the purpose of financing the costs of the design and construction and other expenditures necessary for development and permanent financing of the applicable Development Phase pursuant to this Agreement, including (to the extent provided in the applicable Financing Plan) payments to equity investors in the applicable Development Phase. Developer covenants and agrees, on behalf of itself and its successors and assigns, that it shall not enter into any conveyance for such financing prior to issuance of the Certificate of Completion with respect to a Development Parcel without the prior written approval of the Agency's Executive Director, which approval shall not be unreasonably withheld, conditioned or delayed if such financing is consistent with the applicable approved Financing Plan. As used herein, the terms "mortgage" and "deed of trust" shall mean all other appropriate security interests used in financing real estate acquisition, construction and land development.

Following issuance of the Certificate of Completion with respect to a particular Development Parcel and Development Phase, the limitations on encumbrances of that Development Parcel and that Development Phase set forth in the preceding paragraph shall no longer apply.

8.1.1 Memorandum to be Senior to Mortgages. Developer covenants and agrees that the Memorandum of this Agreement shall be senior in priority to any mortgage or other security instrument recorded against the Property, and that if any such instrument has been recorded against the Property prior to recordation of the Memorandum, Developer shall promptly secure execution of such subordination agreements as may be necessary to ensure that Agency's reversionary interest in the Property shall not be defeated as a result of foreclosure of any such instrument.

8.2 Holder Not Obligated to Construct Improvements. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to construct or complete the applicable Development Phase or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to or be construed to permit or authorize any such holder to devote the applicable Development Parcel to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

8.3 Notice of Default; Right to Cure. Whenever Agency delivers any notice of default or demand to Developer with respect to the commencement, completion, or cessation of the construction of a Development Phase, the Agency shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the applicable Development Parcel, provided that Agency has been provided an address for such notices. Agency shall have no liability to any such holder for any failure by the Agency to provide notice to such holder. Each such holder shall have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the copy of the notice, to cure or remedy or, if the default is of a nature that it cannot be cured within such time period, to commence to cure or remedy any default hereunder. In the event possession of the applicable Development Parcel (or portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within ninety (90) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the applicable Development Phase (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing Developer's obligations to the Agency under this Agreement with respect to that Development Phase. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the Development Phase to which the lien or title of such holder relates. Any such holder properly completing the improvements shall be entitled to a Certificate of Completion for the applicable Development Phase upon compliance with the requirements of this Agreement.

8.4 Failure of Holder to Complete Improvements. In any case where six (6) months after occurrence of a Developer Event of Default (as defined and described in Section 10.3 below) in completion of construction of a particular Development Phase, the holder of record of any

mortgage or deed of trust has not exercised its option to construct that Development Phase, or having first exercised its option to construct, has not proceeded diligently with such construction, the Agency shall be afforded those rights against such holder it would otherwise have against the Developer under this Agreement. In addition, the Agency shall have the right prior to foreclosure or transfer of deed in lieu of foreclosure to purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges properly payable under the mortgage or deed of trust. If the ownership of a particular Development Parcel has vested in the holder, the Agency shall have the right for sixty (60) days after such vesting to acquire that Development Parcel from the holder upon payment of an amount equal to the sum of the following:

- a. The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- b. All expenses with respect to foreclosure;
- c. The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent ownership or management of that Development Parcel (or portion thereof);
- d. The costs of any improvements for the applicable Development Phase made by such holder; and
- e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency.

8.5 Right of Agency to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by a particular Development Parcel, and the holder of any mortgage or deed of trust has not exercised its option to cure the default, Agency may cure the default, without acceleration of the subject loan, following prior notice thereof to Developer. In such event, Developer shall be liable for, and Agency shall be entitled to reimbursement from Developer for all costs and expenses incurred by Agency associated with and attributable to the curing of the default or breach. Agency shall also be entitled to record a lien upon the applicable Development Parcel to the extent of such incurred costs and disbursements.

8.6 Holder to be Notified. For each deed of trust or mortgage creating a security right or interest in a Development Parcel prior to issuance of the Certificate of Completion for that Development Parcel, the provisions of this Article VIII shall be incorporated into the relevant deed of trust or mortgage to the extent deemed necessary by, and in form and substance reasonably satisfactory to the Agency, or shall be acknowledged by the holder of such instrument prior to its creating any security right or interest in the applicable Development Parcel.

8.7 Estoppel Certificates. Either Developer or Agency may, at any time, and from time to time, deliver written notice to the other Party requesting such party to certify in writing that, to the knowledge of the certifying party (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, such notice shall describe the nature and amount of any such default. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The Agency Executive Director is authorized to execute any certificate requested by Developer hereunder.

ARTICLE IX

AGENCY FINANCIAL ASSISTANCE FOR PHASE ONE DEVELOPMENT

9.1 Grant. To assist in development of the Phase One Development as required in order to support the development and operation of the Affordable Units, Agency shall provide financial assistance to Developer in the form of a grant (the "**Grant**") in the amount of Seven Million Seven Hundred Thousand Dollars (\$7,700,000). Agency shall provide the Grant from funds deposited in its Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the CRL. Draws against the Grant shall be disbursed in accordance with the procedure set forth in Section 9.3.

9.2 Use of Grant Proceeds. Developer shall use the proceeds of the Grant (the "**Grant Proceeds**") solely to fund construction and related pre-construction activities of the Phase One Development consistent with the approved Financing Plan and approvals for the Phase One Development. In no event shall any portion of the Grant Proceeds be used to pay any costs related to pre-construction or construction activities for the Phase Two Development.

9.3 Disbursement of Grant Proceeds. Following the Closing for the Phase One Parcel, Agency shall make periodic disbursements of Grant Proceeds to Developer no more than once per calendar month, upon Agency's receipt of a written requisition from Developer specifying the amount and use of the requested Grant Proceeds, accompanied by copies of bills and invoices from third parties and such other documentation as Agency may reasonably require. Agency reserves the right to enter into an intercreditor or other agreement governing construction inspection and disbursement of Grant Proceeds.

ARTICLE X

DEFAULTS AND REMEDIES

10.1 Termination Without Fault. The occurrence of any of the following constitutes a basis for either Party to terminate this Agreement (to the extent set forth below) without fault of the other Party:

(a) Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to the Agency's obligation to convey the Phase One Parcel to Developer, set forth in Articles I and III, by not later than the Phase One Parcel Closing Deadline established pursuant to Section 3.6.1;

(b) Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to the Agency's obligation to convey the Phase Two Parcel to Developer, set forth in Articles I and III, by not later than the Phase Two Parcel Closing Deadline established pursuant to Section 3.6.2;

(c) The Agency, despite good faith and diligent efforts, is unable to convey a particular Development Parcel to Developer, and Developer is otherwise entitled to such conveyance;

(d) After undertaking an inspection of the environmental conditions on, under, about and above the Property, the Developer concludes in the reasonable exercise of its discretion that the Property is or is likely to be contaminated by Hazardous Materials and, as a result of the contamination, the proposed development of the Property in accordance with this Agreement cannot be undertaken successfully without excessive financial risk to the Developer; provided, however, that this Agreement may only be terminated pursuant to this subsection if the Developer notifies the Agency in writing of such determination no later than ninety (90) days from the Effective Date.

Except as otherwise provided in the following paragraph, upon the occurrence of any of the above-described events, 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 Party under this Agreement, except that the indemnification provisions of Sections 4.1, 5.14, 11.1 and 11.19 shall survive such termination and remain in full force and effect.

Notwithstanding the foregoing, in connection with an event described in paragraph (b) above, or in paragraph (c) above that relates to the Phase Two Parcel, this Agreement may be terminated by either Party upon written notice to the other Party only as this Agreement relates to the rights and obligations of the Parties with respect to the Phase Two Parcel and the Phase Two Development, and after such limited termination this Agreement shall remain in full force and effect as it relates to the rights and obligations of the Parties with respect to the Phase One Parcel and the Phase One Development.

10.2 Fault of Agency. Except as to events constituting a basis for termination under Section 10.1, and provided further that the Developer has satisfied its obligations hereunder, the following events shall constitute an **Agency Event of Default**:

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

(b) The Agency breaches any other material provision of this Agreement and fails to cure such breach within any applicable cure period.

Upon the occurrence of any of the above-described events, Developer shall first notify the Agency in writing of its purported breach or failure, giving the Agency thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the Agency does not then so cure within thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, the Agency fails to commence to cure within thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then such failure shall constitute an Agency Event of Default and the Developer shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating this Agreement by delivery of written notice to Agency (provided, however, that the indemnification provisions of Sections 4.1, 5.14, 11.1 and 11.19 shall survive such termination); (2) terminating this Agreement only with respect to the Development Parcel and accompanying Development Phase to which the Agency Event of Default applies, while maintaining this Agreement in full force and effect with respect to the other Development Parcel and accompanying Development Phase; and (3) prosecuting an action for specific performance. Notwithstanding anything to the contrary contained herein, in no event shall damages be awarded against City or Agency upon the occurrence of an Agency Event of Default or upon termination of this Agreement.

10.3 Fault of the Developer. Except as to events constituting a basis for termination under Section 10.1, and provided further that the Agency has satisfied its obligations hereunder, the following events in shall each constitute a **Developer Event of Default**:

(a) The Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner set forth in Article II and Article III, one or more of the conditions precedent to the Agency's obligation to convey a Development Parcel to the Developer;

(b) Developer refuses to accept conveyance of a Development Parcel within the time periods and under the terms set forth in Article III;

(c) An Event of Default arises under any Agency Document other than this Agreement and remains uncured beyond any applicable cure period;

(d) An Event of 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;

(e) Developer fails to commence or complete construction of a Development Phase within the times set forth in Article V, or abandons or suspends construction of a Development Phase prior to completion of all construction for a period of sixty (60) days after written notice of such abandonment or suspension;

- (f) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;
- (g) Developer fails to maintain insurance on the Property and the Project as required pursuant to the Agency Documents, and Developer fails to cure such default within ten (10) days.
- (h) Following conveyance of a Development Parcel to Developer, subject to Developer's right to contest the following charges pursuant to the Agency Documents, if Developer fails to pay taxes or assessments due on that Development Parcel or Development Phase or fails to pay any other charge that may result in a lien on that Development Parcel or Development Phase, and Developer fails to cure such default within ten (10) days.
- (i) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Agency or the City in connection with this Agreement or in any other Agency Document proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Agency or the City;
- (j) A court having 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 either of the Developer under the 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;
- (k) 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;
- (l) The Developer shall have voluntarily suspended its business or Developer's partnership shall have been dissolved or terminated; or
- (m) If Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 10.3 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 Agency 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 one hundred twenty (120) days after receipt of notice of the default.

Upon Developer's default under this Agreement, the Agency shall provide written notice of the purported breach, and unless a shorter cure period is specified above or in the case of a Developer Event of Default arising under clauses (c) through (l) above, Developer shall have thirty (30) days after the date upon which Agency shall have given written notice of the default to Developer to cure such default; 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 one hundred twenty (120) days after receipt of notice of the default.

10.4 Legal Actions. Upon the occurrence of a default and the expiration of the applicable cure period the nondefaulting Party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purpose of this Agreement. Any such legal actions shall be filed in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California. Notwithstanding anything herein to the contrary, a Party's right to recover damages in the event of a default shall be limited to recovery of actual damages and shall exclude consequential damages.

10.5 Remedies Cumulative; No Waiver. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties hereunder are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default. Failure or delay by either Party in providing a notice of default shall not constitute a waiver of any default.

10.6 Right of Reverter. If following conveyance of a Development Parcel to Developer and prior to the time Developer is entitled to issuance of a Certificate of Completion for that Development Parcel, Developer (i) fails to begin construction of the applicable Development Phase within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof, (ii) abandons or suspends construction of the applicable Development Phase for a period of sixty (60) days after written notice from Agency, (iii) fails to complete construction of the applicable Development Phase by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the applicable Development Parcel or this Agreement in violation of Article VII, the Agency may re-enter and take possession of that Development Parcel or any portion thereof with all improvements thereon without payment or compensation to Developer, and revert in the Agency the estate theretofore conveyed to the Developer. The interest created pursuant to this Section 10.6 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from the Agency's option to purchase the applicable Development Parcel under the same or similar conditions specified in Section 10.7. Agency's rights pursuant to this Section 10.6 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

Upon revesting in the Agency of title to the applicable Development Parcel or any portion thereof as provided in this Section 10.6, the Agency shall use its best efforts to resell the Development Parcel or applicable portion thereof and as soon as possible, in a commercially reasonable manner to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the applicable Development Phase in accordance with the uses specified for such property in this Agreement and in a manner satisfactory to the Agency. Upon such resale of the applicable Development Parcel or any portion thereof the sale proceeds shall be applied as follows:

(a) First, to reimburse the Agency for all costs and expenses incurred by Agency, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture and resale of the Development Parcel; all taxes and assessments payable prior to resale, and all applicable water and sewer charges; any payments necessary to discharge any encumbrances or liens on the Development Parcel at the time of revesting of title thereto in the Agency or to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the applicable Development Phase or any part thereof on the Development Parcel; and any other amounts owed to the Agency by Developer and its successors or transferee.

(b) Second, to reimburse the Agency for damages to which it is entitled under this Agreement by reason of the Developer's default.

(c) Third, to reimburse the Developer, its successor or transferee, up to the amount equal to:

(1) The payment made to the Agency for the applicable Development Parcel;
plus

(2) The fair market value of the improvements Developer has placed on the Development Parcel or applicable portion thereof; less

(3) Any gains or income withdrawn or made by the Developer from the Development Parcel or applicable portion thereof or the improvements thereon.

Notwithstanding the foregoing, the amount calculated pursuant to this subsection (c) shall not exceed the fair market value of the Development Parcel or applicable portion thereof, together with the improvements thereon as of the date of the default or failure which gave rise to the Agency's exercise of the right of reverter.

(4) Any balance remaining after such reimbursements shall be retained by the Agency.

The rights established in this Section 10.6 are to be interpreted in light of the fact that the Agency will convey each Development Parcel to the Developer for development as specified herein and not for speculation.

10.7 Option to Purchase, Enter and Possess. The Agency shall have the additional right at its option to purchase, enter and take possession of a Development Parcel or any portion thereof owned by the Developer with all improvements thereon (the "**Repurchase Option**"), if after conveyance of the applicable Development Parcel and prior to the time Developer is entitled to issuance of a Certificate of Completion for that Development Parcel, Developer (i) fails to begin construction of the applicable Development Phase within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof, (ii) abandons or suspends construction of the applicable Development Phase for a period of sixty (60) days after written notice from Agency, (iii) fails to complete construction of the applicable Development Phase by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the applicable Development Parcel or this Agreement in violation of Article VII.

To exercise the Repurchase Option, the Agency shall pay to the Developer cash in an amount equal to:

- (i) The purchase price paid to the Agency by the Developer for the applicable Development Parcel; plus
- (ii) The fair market value of any new improvements existing on the applicable Development Parcel at the time of exercise of the Repurchase Option; less
- (iii) Any gains or income withdrawn or made by the Developer from the applicable Development Parcel or the improvements thereon; less
- (iv) The value of any liens or encumbrances on the applicable Development Parcel which the Agency assumes or takes subject to; less
- (v) Any damages to which the Agency is entitled under this Agreement by reason of Developer's default.

In order to exercise the Repurchase Option, Agency shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Agency with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Agency's receipt of such summary, Agency shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 10.7, and Developer shall execute and deposit into such escrow a grant deed transferring to Agency all of Developer's interest in the Property, or portion thereof, as applicable and the improvements located thereon; provided, however, that Developer may contest by appropriate legal action the Agency's determination of the amount of all sums owing to Developer pursuant to this Section 10.7.

10.8 Memorandum of Right of Reverter/Option to Purchase. The Parties shall cause a memorandum or memoranda of the rights granted the Agency in Sections 10.6 and 10.7 of this Agreement to be recorded in the official records of Santa Clara County at the time of the Closing for conveyance of each Development Parcel to Developer. In lieu of such memorandum, the

rights afforded Agency pursuant to Sections 10.6 and 10.7 may be described in the Grant Deed for each Development Parcel.

10.9 Construction Plans. If this Agreement is terminated pursuant to Section 10.1 or 10.3, the Developer, at no cost to the Agency, shall deliver to the Agency copies of any construction plans and studies in the Developer' possession or in the possession of the Developer' s consultants related to development of the Project on the Property (or the portion thereof that is the subject of such termination), subject to the rights of third parties. In the event the Agency utilizes the construction plans or studies, the Agency shall indemnify the Developer for any claims arising from the use of construction plans or studies by the Agency pursuant to this Section 10.9.

10.10 Rights of Mortgagees. Any rights of the Agency under this Article X 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. Any conveyance or reverter of the Property (or portion thereof) to the Agency pursuant to this Article X shall be subject to mortgages and deeds of trust permitted by this Agreement.

ARTICLE XI

MISCELLANEOUS PROVISIONS

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

11.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, 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 court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Agency which shall not excuse performance by Agency), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual

agreement of Developer and Agency (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Agency) pursuant to an Operating Memorandum (as defined and described in Section 11.20) without formal amendment of this Agreement. Agency 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 work of the applicable Development Phase shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency: Redevelopment Agency of the City of Milpitas
 455 East Calaveras
 Milpitas, CA 95035
 Attention: Executive Director

Developer: South Main Street Senior Housing, LLC
 c/o _____

 Attention: _____

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or

establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

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

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

11.7 Provisions Not Merged With Deeds; Survival. None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by any grant deed conveying either of the Development Parcels to Developer or any successor in interest, and neither such grant deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein. All representations made by Developer and Agency hereunder and Developer's and Agency's respective indemnification obligations pursuant to Sections 4.1, 4.4.2, 5.7, 5.9, 5.14, 11.1 and 11.19 shall survive the expiration or termination of this Agreement and the issuance and recordation of any Certificate of Completion.

11.8 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

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

11.10 Entire Agreement. This Agreement, including Exhibits A through I attached hereto and incorporated herein by this reference, together with the other Agency Documents, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

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

11.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

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

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

11.15 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of Agency or City shall be personally liable to Developer or its successors in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

11.16 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.

11.17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

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

11.19 General Indemnification. Developer shall indemnify, defend (with counsel approved by Agency) and hold harmless Indemnitees from all Claims (including without limitation, attorneys' fees) arising in connection with any claim, action or proceeding to attack, set aside, void, or annul any approval by the City or the Agency or any of its agencies, departments, commissions,

agents, officers, employees or legislative body concerning the Project or this Agreement. The Agency will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. The Agency and City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if the Agency or City chooses to do so, Developer shall reimburse Agency and City for reasonable attorneys' fees and expenses incurred.

11.20 Operating Memoranda. 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 of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

Operating Memoranda may be executed on the Agency's behalf by its Executive Director, or the Executive Director's designee. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 11.5, and must be approved by the Agency's Board.

IN WITNESS WHEREOF, Agency and Developer have executed this Agreement effective as of the date first written above.

**REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS**

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Agency Counsel

**SOUTH MAIN STREET SENIOR HOUSING, LLC
a California limited liability company**

By: Callahan Senior Living Associate III, LLC
A California limited liability company,
Its Co-Managing Member

By: _____
Joseph W. Callahan, Jr.
Managing Member

By: Collaborative Senior Living I, LLC
A California limited liability company,
Its Co-Managing Member

By: _____
James R. Burns II,
Managing Member

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT A

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LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

BEGINNING AT A POINT IN THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J.H. GUERRERO, ET AL TO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, DATED JULY 12, 1956 AND RECORDED JULY 13, 1956 IN BOOK 3549, OF OFFICIAL RECORDS, AT PAGE 403, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, SOUTH 84° 28' EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT 465.57 FEET TO THE NORTHEASTERLY CORNER THEREOF IN THE WESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT-OF-WAY; THENCE NORTH 3° 22' WEST ALONG THE WESTERLY LINE OF SAID RIGHT-OF-WAY 114.76 FEET TO THE NORTHEASTERLY CORNER OF THAT CERTAIN 1.718 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J.H. GUERRERO, ET AL TO J.H. GUERRERO, ET AL, DATED APRIL 11, 1949 AND RECORDED MAY 11, 1949, IN BOOK 1785 OF OFFICIAL RECORDS, AT PAGE 484, SANTA CLARA COUNTY RECORDS; THENCE NORTH 84° 28' WEST ALONG THE NORTHERLY LINE OF SAID 1.718 ACRE TRACT 437.00 FEET TO THE NORTHWESTERLY CORNER THEREOF IN THE SAID EASTERLY LINE OF SAN JOSE-MILPITAS ROAD; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF SAN JOSE-MILPITAS ROAD ALONG AN ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 2083.00 FEET FROM WHICH THE CENTER POINT BEARS NORTH 80° 35' 30" WEST FOR AN ARC DISTANCE OF 114.10 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE CITY OF MILPITAS IN DEEDS RECORDED IN BOOK 5383, PAGE 29 AND IN BOOK 8420, PAGE 186, OFFICIAL RECORDS.

PARCEL TWO-A:

A STRIP OF LAND 12 FEET WIDE WHICH IS THE WESTERLY 12 FOOT OF THAT CERTAIN 1.178 ACRE PARCEL DESCRIBED IN DEED FROM J. H. GUERRERO ET AL TO THOMAS E. CARDOZA AND ELSEE M. CARDOZA, HIS WIFE, AND RECORDED JULY 15, 1959 IN BOOK 4481, PAGE 251 SANTA CLARA COUNTY OFFICIAL RECORDS WHICH 12 FOOT STRIP IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J. H. GUERRERO ET AL TO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, DATED JULY 12, 1956 AND RECORDED JULY 13, 1956 IN BOOK 3549, PAGE 403 SANTA CLARA COUNTY OFFICIAL RECORDS; THENCE FROM SAID POINT OF BEGINNING SOUTH 84° 28' EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT 12.13 FEET TO AN IRON PIPE; THENCE NORTHERLY ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 2045 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 77° 25' 05" WEST, THROUGH A CENTRAL ANGLE OF 3° 11' 47" AN ARC DISTANCE OF 114.09 FEET TO AN IRON PIPE; THENCE ENORTH 84° 28' WEST ALONG THE NORTHERLY LINE OF SAID 1.178 ACRE PARCEL OF LAND A DISTANCE OF 12.03 FEET TO A POINT IN THE EASTERLY LINE OF THE SAN JOSE-MILPITAS ROAD AND THE NORTHWESTERLY CORNER OF SAID 1.178 ACRE PARCEL; THENCE SOUTHERLY

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ALONG SAID EASTERLY LINE OF THE SAN JOSE-MILPITAS ROAD ALONG AN ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 2033 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 80° 35' 30" WEST, THROUGH A CENTRAL ANGLE OF 3° 12' 56" AN ARC DISTANCE OF 114.10 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF LAND LYING WESTERLY OF THE EASTERLY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DEED RECORDED SEPTEMBER 16, 1985 IN BOOK 31458 OF OFFICIAL RECORDS AT PAGE 1705, SANTA CLARA COUNTY RECORDS.

PARCEL TWO-B:

BEGINNING AT A POINT IN THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J. H. GUERRERO ET AL, TO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, DATED JULY 12, 1956 AND RECORDED JULY 13, 1956 IN BOOK 3549 AT PAGE 403, SANTA CLARA COUNTY OFFICIAL RECORDS; THENCE SOUTH 84° 28' EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT, 12.13 FEET TO AN IRON PIPE IN THE SOUTHEASTERLY CORNER OF THAT CERTAIN 0.03 ACRE PARCEL OF LAND CONVEYED TO THE CITY OF MILPITAS BY DEED RECORDED NOVEMBER 30, 1961 IN BOOK OF OFFICIAL RECORDS NUMBERED 5383, AT PAGE 29 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE EASTERLY LINE OF SAID 0.03 ACRE PARCEL OF LAND, NORTHERLY ALONG AN ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 2045 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 77° 25' 05" WEST, THROUGH A CENTRAL ANGLE OF 3° 11' 47", AN ARC DISTANCE OF 114.09 FEET TO THE NORTHEASTERLY CORNER OF SAID 0.03 ACRE PARCEL OF LAND IN THE NORTHERLY LINE OF THAT CERTAIN 1.178 ACRE PARCEL OF LAND CONVEYED TO THOMAS E. CARDOZA, ET UX, RECORDED JULY 15, 1959 IN BOOK OF OFFICIAL RECORDS NUMBERED 4481, AT PAGE 251; THENCE ALONG THE NORTHERLY LINE OF SAID 1.178 ACRE PARCEL OF LAND SOUTH 84° 28' EAST, .05 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTH 8° 57' 21" WEST 113.75 FEET TO THE NORTHERLY LINE OF SAID 0.54 ACRE PARCEL CONVEYED TO PACIFIC GAS AND ELECTRIC COMPANY ABOVE REFERRED TO; THENCE ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE PARCEL OF LAND NORTH 84° 28' WEST 4.06 FEET TO THE TRUE POINT OF BEGINNING, AND BEING A PORTION OF THE MILPITAS RANCHO.

PARCEL TWO-C:

BEGINNING AT THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY THE DEED RECORDED JULY 15, 1959 IN BOOK 4491 AT PAGE 251, OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY EXTENSION LINE OF THE NORTHEASTERLY LINE OF SAID PARCEL NORTH 83° 39' 47" WEST, 1.86 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 16, 1985 IN BOOK 31458, PAGE 1705 OF OFFICIAL RECORDS; THENCE ALONG SAID RIGHT OF WAY LINE OF SOUTH MAIN STREET SOUTH 9° 46' 43" WEST, 72.81 FEET TO A POINT OF CUSP WITH A CURVE TO THE LEFT TO WHICH POINT A RADIAL LINE BEARS SOUTH 77° 43' 56" EAST; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND CONVEYED IN SAID DEED RECORDED BOOK 4491 AT PAGE 251 OF OFFICIAL RECORDS, ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 2° 03' 21" HAVING A RADIUS OF 2033.00 FEET AN ARC LENGTH OF 72.95 FEET TO THE POINT OF BEGINNING.

PARCEL THREE-A

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PORTION OF THE MILPITAS RANCHO DESCRIBED AS FOLLOWS:

BEGINNING ON THE EASTERLY LINE OF MAIN STREET, ALSO KNOWN AS THE STATE HIGHWAY LEADING FROM SAN JOSE TO MILPITAS, DISTANT THEREON SOUTH 8 DEG. 58 MIN. 30 SEC. WEST 202.70 FEET FROM THE WESTERLY CORNER OF THE 1 ACRE TRACT OF LAND CONVEYED TO ANGELO TORRES, ET UX, BY DEED RECORDED MAY 24, 1929, BOOK 468, OFFICIAL RECORDS, PAGE 50; THENCE FROM SAID POINT OF BEGINNING SOUTH 8° 58' 30" WEST ALONG SAID LINE OF MAIN STREET, 201.31 FEET TO A CONCRETE MONUMENT; THENCE CONTINUING ALONG SAID LINE OF MAIN STREET ALONG A TANGENT CURVE TO THE RIGHT, WITH A RADIUS OF 2.033 FEET, FOR AN ARC DISTANCE OF 16.10 FEET TO AN IRON PIPE; THENCE SOUTH 84° 28' EAST PARALLEL WITH THE SOUTHERLY LINE OF SAID 1 ACRE TRACT OF LAND, 437 FEET TO AN IRON PIPE ON THE WESTERLY LINE OF THE LANDS OR RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE NORTH 3° 22' WEST ALONG SAID WESTERLY LINE 216.31 FEET TO A POINT FROM WHICH THE SOUTHEASTERLY CORNER OF SAID 1 ACRE TRACT OF LAND BEARS NORTH 3° 22' WEST 208.10 FEET; THENCE WESTERLY IN A DIRECT LINE, 393 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL THREE-B:

BEGINNING AT THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY THE DEED RECORDED APRIL 15, 1981 IN BOOK G023 AT PAGE 734 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL SOUTH 9° 46' 43" WEST, 201.31 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 27' 13" HAVING A RADIUS OF 2033 FEET AN ARC LENGTH OF 16.10 FEET; THENCE ALONG THE NORTHWESTERLY EXTENSION LINE OF THE SOUTHWESTERLY LINE OF SAID PARCEL NORTH 83° 39' 47" WEST, 1.86 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 16, 1985 IN BOOK 3458, PAGE 1705 OF OFFICIAL RECORDS; THENCE ALONG SAID RIGHT OF WAY LINE OF SOUTH MAIN STREET NORTH 9° 46' 43" EAST, 217.42 FEET TO THE NORTHWESTERLY EXTENSION LINE OF THE NORTHEASTERLY LINE OF SAID PARCEL OF LAND CONVEYED IN SAID DEED RECORDED IN BOOK G023 AT PAGE 734 OF OFFICIAL RECORDS; THENCE ALONG SAID NORTHWESTERLY EXTENSION LINE SOUTH 83° 10' 39" EAST, 1.92 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR:

PARCEL 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP BEING A PORTION OF THE MILPITAS RANCHO" WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JANUARY 11, 1995 IN BOOK 662 OF MAPS, PAGES 5 AND 6.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM, OTHER HYDROCARBON SUBSTANCES AND MINERALS LYING 500 FEET OR MORE BELOW THE SURFACE OF THE HEREIN DESCRIBED LAND, WITHOUT HOWEVER, THE RIGHT TO ENTER UPON THE SURFACE OF SAID DESCRIBED LAND OR WITHIN 500 FEET OF THE SUBSURFACE THEREOF FOR THE PURPOSES OF PRODUCING OR DEVELOPMENT OF SUCH RESERVED SUBSTANCES, AS RESERVED BY KAISER ALUMINUM AND CHEMICAL CORPORATION, A CORPORATION IN THE DEED RECORDED MARCH 31, 1972 IN BOOK 9768 PAGE 368 OFFICIAL RECORDS.

PARCEL FIVE:

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ALL OF PARCEL 2, AS SHOWN UPON THAT CERTAIN MAP ENTITLED PARCEL MAP BEING A PORTION OF THE MILPITAS RANCHO, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JANUARY 11, 1995 IN BOOK 662 OF MAPS, PAGES 5 AND 6.

EXCEPTING THEREFROM, ALL OIL, GAS, PETROLEUM, OTHER HYDROCARBON SUBSTANCES AND MINERALS LYING 500 FEET OR MORE BELOW THE SURFACE OF THE HEREIN DESCRIBED LAND, WITHOUT HOWEVER, THE RIGHT TO ENTER UPON THE SURFACE OF SAID DESCRIBED LAND OR WITHIN 500 FEET OF THE SUBSURFACE THEREOF FOR THE PURPOSE OF PRODUCING OR DEVELOPMENT OF SUCH RESERVED SUBSTANCES.

PARCEL SIX:

BEING A PORTION OF PARCELS 3 AND 4 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN BOOK 662 OF MAPS AT PAGES 5 AND 6, SANTA CLARA COUNTY RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID PARCEL 4, SAID POINT BEING ON THE EASTERLY LINE OF SOUTH MAIN STREET AS SHOWN ON SAID MAP; THENCE ALONG THE LINES OF SAID PARCEL 4 SOUTH 83° 39' 47" EAST 463.44 FEET; SOUTH 2° 33' 16" EAST 50.61 FEET; SOUTH 2° 31' 16" EAST 194.14 FEET; NORTH 83° 39' 47" WEST 160.67 FEET; THENCE LEAVING SAID LINE NORTH 6° 20' 13" EAST 216.83 FEET; THENCE NORTH 83° 39' 47" WEST 341.99 FEET TO THE EASTERLY LINE OF SAID SOUTH MAIN STREET; THENCE ALONG SAID LINE NORTH 9° 46' 43" EAST 25.05 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS, AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AND LYING BELOW A PLANE WHICH IS 500 FEET BELOW THE SURFACE OF THE GROUND; PROVIDED, HOWEVER, THAT ANY EXPLORATION FOR OR REMOVAL OF ANY SUCH OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS, AND NATURALLY CREATED HOT WATER AND STEAM SHALL BE BY MEANS OF SLANT DRILLING OR TUNNELING FROM LANDS ADJACENT TO SAID REAL PROPERTY OR OTHER METHODS NOT REQUIRING OPERATIONS ON THE SURFACE OF SAID REAL PROPERTY AND SHALL BE PERFORMED SO AS NOT TO ENDANGER SAID SURFACE OR ANY STRUCTURE WHICH SHALL BE ERECTED OR CONSTRUCTION THEREON.

PARCEL SEVEN:

BEING A PORTION OF PARCELS 3 AND 4 AS SHOWN ON THAT CERTAIN MAP ENTITLED, PARCEL MAP BEING A PORTION OF THE MILPITAS RANCHO, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JANUARY 11, 1995 IN BOOK 662 OF MAPS, PAGES 5 AND 6, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID PARCEL 3, SAID POINT BEING ON THE EASTERLY LINE OF SOUTH MAIN STREET AS SHOWN ON SAID MAP; THENCE ALONG LINES OF SAID PARCEL 3 SOUTH 83° 39' 47" EAST 341.99 FEET; THENCE LEAVING SAID LINE SOUTH 6° 20' 13" WEST 216.83 FEET TO A POINT ON THE SOUTHERLY LINE OF PARCEL 4 AS SHOWN ON SAID MAP; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCELS 3 AND 4 OF SAID MAP NORTH 83° 39' 47" WEST 149.33 FEET; THENCE ALONG THE LINE OF SAID PARCEL 3 NORTH 6° 20' 13" EAST 191.83 FEET AND NORTH 83° 39' 47" WEST 200.16 FEET TO THE EASTERLY LINE OF SAID SOUTH MAIN STREET; THENCE ALONG SAID LINE NORTH 9° 46' 43" EAST 25.05

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FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS, AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AND LYING BELOW A PLANE WHICH IS 500 FEET BELOW THE SURFACE OF THE GROUND; PROVIDED, HOWEVER, THAT ANY EXPLORATION FOR OR REMOVAL OF ANY SUCH OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS, AND NATURALLY CREATED HOT WATER AND STEAM SHALL BE BY MEANS OF SLANT DRILLING OR TUNNELING FROM LANDS ADJACENT TO SAID REAL PROPERTY OR OTHER METHODS NOT REQUIRING OPERATIONS ON THE SURFACE OF SAID REAL PROPERTY AND SHALL BE PERFORMED SO AS NOT TO ENDANGER SAID SURFACE OR ANY STRUCTURE WHICH SHALL BE ERECTED OR CONSTRUCTION THEREON.

APN: 086-22-027 (Affects Parcels One and Two), 086-22-028 (Affects Parcel Three); 086-22-033 (Affects Parcel Four); 086-22-034 (Affects Parcel Five); 086-22-041 (Affects Parcel Six) and 086-22-042 (Affects Parcel Seven)

First American Title Insurance Company

A handwritten signature in black ink, appearing to be 'A.T.', with a long, sweeping flourish extending to the right.

Exhibit A-1

LEGAL DESCRIPTION OF PARCEL ONE

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.4.2.]

Exhibit A-2

LEGAL DESCRIPTION OF PARCEL TWO

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.4.2.]

Exhibit A-3

LEGAL DESCRIPTION OF CITY PARCELS

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.4.2.]

Exhibit B

SCOPE OF DEVELOPMENT—PROJECT DESCRIPTION

Exhibit BScope of Development—Project Description

This Exhibit B sets forth the proposed Scope of Development and project description for the Project. The accompanying Preliminary Site Plan (Exhibit C-1) provides a graphic depiction of the proposed Project described below. Attachment No. 1 to this Exhibit B is a diagram showing the general location and scope of proposed on-site and off-site public improvements to be developed by Developer as part of the Project, and as further described below.

Capitalized terms used below have the meanings given in the Agreement to which this Exhibit B is attached.

A. Location

The Property upon which the proposed Project will be developed is located at 1504-1620 South Main Street, Milpitas, California (APN's 086-22-027, 028, 033,034, 041, and 042) on the east side at its intersection of Cedar Street. The Property's gross land area is approximately 5.942 acres. The Property is subject to the Current Entitlements under Resolution No. 7734 as approved by the City Council on February 5, 2008. The Current Entitlements allow a 387-unit condominium project in three four story building. The Property is located within the "R4-TOD-S" Multi Family Very High Density with a Transit Oriented Development Overlay in the Midtown Specific Plan Area.

B. Proposed Project

The proposed Project is a two phase development consisting of 180 units of "Continuum of Care Senior Housing" in the Phase One Development on the Phase One Parcel (approximately 1.94 net acres), and 207 units of Family housing in the Phase Two Development on the Phase Two Parcel (approximately 3.30 net acres). The total combined unit count for the proposed Project is 387 units, the same density as allowed under the Current Entitlements (356 units allowed in "R-4-TOD-S" of which 17.7% are affordable (thus 63 units) plus a density bonus of 31 units allowed in "R-4-TOD-S").

1. Phase One Development(a) Overview.

The Phase One Development will be named "South Main Senior Lifestyle" (SMSL) and will consist of 180 units of "Continuum of Care Senior Housing," including 63 Affordable Units at an affordable housing cost to income-qualified very low and low income households, and 136 units at "Fair Market" located on the southern portion of the Property on the approximately 1.94 net acre Phase One Parcel. The Phase One Development will be a "continuing care" facility providing a full program of services and amenities to the residents. The residents living in the Phase One Development will have a range from "Independent Living

with Services” to “Congregate Care with Services” to “Assisted Living” accommodations.

The Phase One Development Senior Housing units will be “mixed” and configured in the following manner:

(i) Types and Affordability of Affordable Units

A. 9 assisted living units @ 50% of Area Median Income (AMI)

B. 7 assisted living units @ 80% AMI

C. 27 congregate care units @ 50% AMI

D. 20 congregate care units @ 80% AMI

(ii) The income mix among living types will be:

Assisted Living Units:

A. Market Rate: 29 one bedroom units

B. Affordable: 16 one bedroom units

Congregate Care Units:

A. Market Rate: 16 one bedroom units

B. Affordable: 47 one bedroom units

C. Market Rate 72 two bedroom units

(iii) The unit sizes will be approximately the following:

1. Assisted Living Units: 650 s.f. +/-
2. 1 Bedroom Units: 750 s.f. to 800 s.f.
3. 2 Bedroom Units: 1100 s.f. +/-

(b) The Phase One Development will be a single structure in a “C” configuration:

- o The configuration allows three distinctive exterior courtyards allowing use by both residents and members of the community providing approximately 16,000 s.f. of private outdoor landscaped courtyards. The courtyards will be finished with concrete pavers with integrated plantered landscaping allowing the project to integrate “C-3 water treatment” mitigation. One courtyard will have “alfresco dining” for the dining room bistro areas. The center courtyard will have a swimming pool and outdoor spas and space

for exercise programs and the third courtyard will have areas for private relaxation as well as additional area for exercise programs. Three of the exterior elevations are fronting public streets while the South elevation presents itself to a 20' wide "green" emergency access easement on the Southern property line constructed of concrete pavers that allows grass while maintaining and allowing a drivable surface for emergency vehicles.

(c) The Phase One Development will be 4 stories above subterranean parking:

- The parking area will have approximately 180 parking spaces, miscellaneous resident storage and mechanical support areas for the complex in a subterranean garage. The parking will be accessed from Cedar Way and Costa Street. The parking is determined by historical data of projects of similar mix. As stated, this project is Assisted Living and Congregate Care. The parking requirement is less than family housing, due to the age and non-ambulatory status of some residents. The parking requirement on a use basis is .7 parking space/unit plus staff parking of 35 spaces equating to 161 spaces. The balance of 19 spaces are allocated for visitor parking in the subterranean garage. There is additional visitor parking along Costa Street and Cedar Way.
- The first floor main entry will have a "Porte Cochere" accessible from Cedar Way, allowing residents and visitors to have a protected vehicular drop off and "queing area" for resident activities van pick up. As one enters the building, a vast lobby will have a "Reception Desk" on the right and a "Concierge Station" on the left. An expanse of glass will open unto the main courtyard with a water featured center piece. A "Bistro" style café, gaming and activity areas and the main dining area will be on the East Wing. The kitchen, support areas, pick-up and deliveries and garbage pick-up will be off of Costa Street (east wing). Administrative areas, an elevator core will be in the center of the building. Residential areas will comprise all of the "West Wing" of the first floor.
- Floors 2 through 4 will be all residential with the required support areas.
- The Phase One Development will be 4 stories of wood frame construction (Type V, A Construction) above a reinforced concrete (Type I A Construction) subterranean parking garage. The street level (first floor-floor podium) will be constructed of reinforced concrete, designed to all current codes for structural, occupancy, fire separation, area separations and other miscellaneous code compliance separation from the habital areas on floors 1 through 4.

The style of design will have a California Mediterranean feel created by the detail of ornamentation on the stucco and stone exterior integrated with contemporary detailing of balconies, eaves and a standing seam copper finished metal roof.

(d) Public Improvement Associated with Phase One Development:

The following public street, utility and infrastructure improvements are proposed to be constructed by Developer as part of the Phase One Development in accordance with all applicable City standards and requirements (see also Attachment No. 1):

(i) On-Site

- Construction of Cedar Way (56' ROW) from S. Main Street to Costa Street
- Construction of Costa Street from southern boundary (Aspen Villages) to northern curb return of Cedar Way.
- Storm drain, sanitary sewer, water line, and joint utility trench within Cedar Way and the Phase I portion of Costa Street.
- 12' soundwall along eastern property boundary adjacent to railroad.
- All weather fire access (20' width) along southern property boundary.

(ii) Off-Site

- South Main Street frontage improvements including:
 - Curb, gutter, sidewalk removal and replacement
 - AC overlay of Main Street frontage including signage and striping
 - Connection of utilities to existing (storm, water, sanitary sewer, dry utilities)
 - Streetlight, tree wells, street trees, street furniture, and fire hydrants
 - New bus turnout and bus stop shelter
 - New raised median installation including landscaping
- Modification of the existing traffic signal at S. Main Street and Cedar Way intersection.
- Replacement of a portion of the The Pines sound wall on the east side of S. Main Street between Cedar Way and the southerly limits of Jerry's Market.

(e) Overview of Phase One Development Services and Amenities:

The building will be approximately 215,000 habitable square feet in size plus underground parking integrated around exterior courtyards. Superior alcove, one- and two-bedroom units will meet the demand for larger living spaces with an abundance of storage area. Interior upgrades will include a full kitchen as well as a stacked washer and dryer in each unit.

The facility will accommodate both healthy, active seniors (Independent residents) and more frail seniors (Assisted Living residents). A portion of the living units will be licensed as a boarding home.

- o Independent Living - For residents who are ambulatory or semi-ambulatory, alert, and physically and mentally capable of independent management of daily activities.
- o Assisted Living - For ambulatory or semi-ambulatory residents who need assistance with activities of daily living. This program is designed to enable continued residency in the retirement community.

This “continuum of care” allows residents to age within a home environment minimizing the discomfort of multiple moves. The facility will have a full service dining establishment, a “Bistro” dining option, a fitness center, a recreation center, a hair salon, an outdoor recreational area including a swimming pool and spa and a number of other amenities. The “lifestyle” created for the residents includes continuing education, programmed off campus events and “outings”, a varied selection of health, fitness and recreational programs, and a unique approach to a “Northern California Style”. Many of the programs for seniors will be open to the senior public for a fee, bringing added benefit to the community.

The services and amenities to be provided to residents of the Phase One Development will be provided by a professional staff, including departments for culinary services, health and wellness, housekeeping, administration, maintenance, and programs (including a full-time activities coordinator).

The attached Attachment No. 2 provides a more complete description of the services and amenities program for the Phase One Development.

2. Phase Two Development

(a) Overview.

The Phase Two Development will consist of 207 units of family housing with all units at "Fair Market" located on the northern portion of the Property on the approximately 3.30 net acre Phase Two Parcel.

The Phase Two Development family housing units will be configured and sized approximately in the following manner:

1. Studios/1 Bath: 12 units approx. 625 s.f. +/-
2. 1 Bedroom/1 Baths: 12 units approx. 700 s.f. +/-
3. 1 Bedroom/1 Baths premium: 50 units approx. 850 s.f. +/-
4. 2 Bedroom/2 Baths: 41 units approx. 1000 s.f. +/-
5. 2 Bedroom/2 Baths premium: 42 units approx. 1150 s.f. +/-
6. 3 Bedroom/2 Baths: 12 units approx. 1300 s.f. +/-

(b) The Phase Two Development will be three structures:

- o There will be two structures of housing and a community/administration building in the center of the complex. The configuration and site placement of the structures allows four distinctive exterior courtyards with a pool and spa area in the center. The courtyard allow use by both residents and members of the community. The courtyards will be finished with concrete pavers with integrated planter landscaping allowing the project to integrate "C-3 water treatment" mitigation.
- o The Phase Two Development structures will be 4 stories for the residential and a single story community/administrative-business center above subterranean parking.
- o The subterranean parking area will have approximately 346 parking spaces, miscellaneous resident storage and mechanical support areas in a subterranean garage. The parking will be accessed from Cedar Way, Costa Street and the northerly east-west street.
- o The Community Center/Business Center, a single story structure will front unto Cedar Way with 8 visitor parking spaces and a resident/visitors drop off area. The structure will be a wood frame

(Type V, A Construction), stucco exterior with detailing and color integrated into the overall complex.

- Phase Two Development residential buildings will be 4 stories of wood frame construction (Type V, A Construction) above a reinforced concrete (Type I A Construction) subterranean parking garage. The street level (first floor-floor podium) will be constructed of reinforced concrete, designed to all current codes for structural, occupancy, fire separation, area separations and other miscellaneous code compliance separation from the habitable areas on floors 1 through 4.

The style of design will have a California Mediterranean feel created by the detail of ornamentation on the stucco and stone exterior integrated with contemporary detailing of balconies, eaves and a standing seam copper finished metal roof.

(c) Public Improvements Associated with Phase Two Development:

The following public street, utility and infrastructure improvements are proposed to be constructed by Developer as part of the Phase Two Development in accordance with all applicable City standards and requirements (see also Attachment No. 1):

- (i) On-Site
 - Construction of Costa Street from the northern Cedar Way curb return to the northern property line.
 - Construction of on-half of the northern east/west street (Street "A") from S. Main Street to Costa Way.
 - Storm drain, sanitary sewer, water line, and joint utility trench within the Phase II portion of Costa Street and Street "A".
- (ii) Off-Site
 - Street conforms and associated signing and striping revisions associated with the connection of Street "A" intersection with S. Main Street

(d) Proposed Revisions to Current Entitlements

Following is a summary of the proposed revisions to the Current Entitlements to facilitate development of the proposed Project (as well as a summary of specified aspects of the Current Entitlements that would continue to apply).

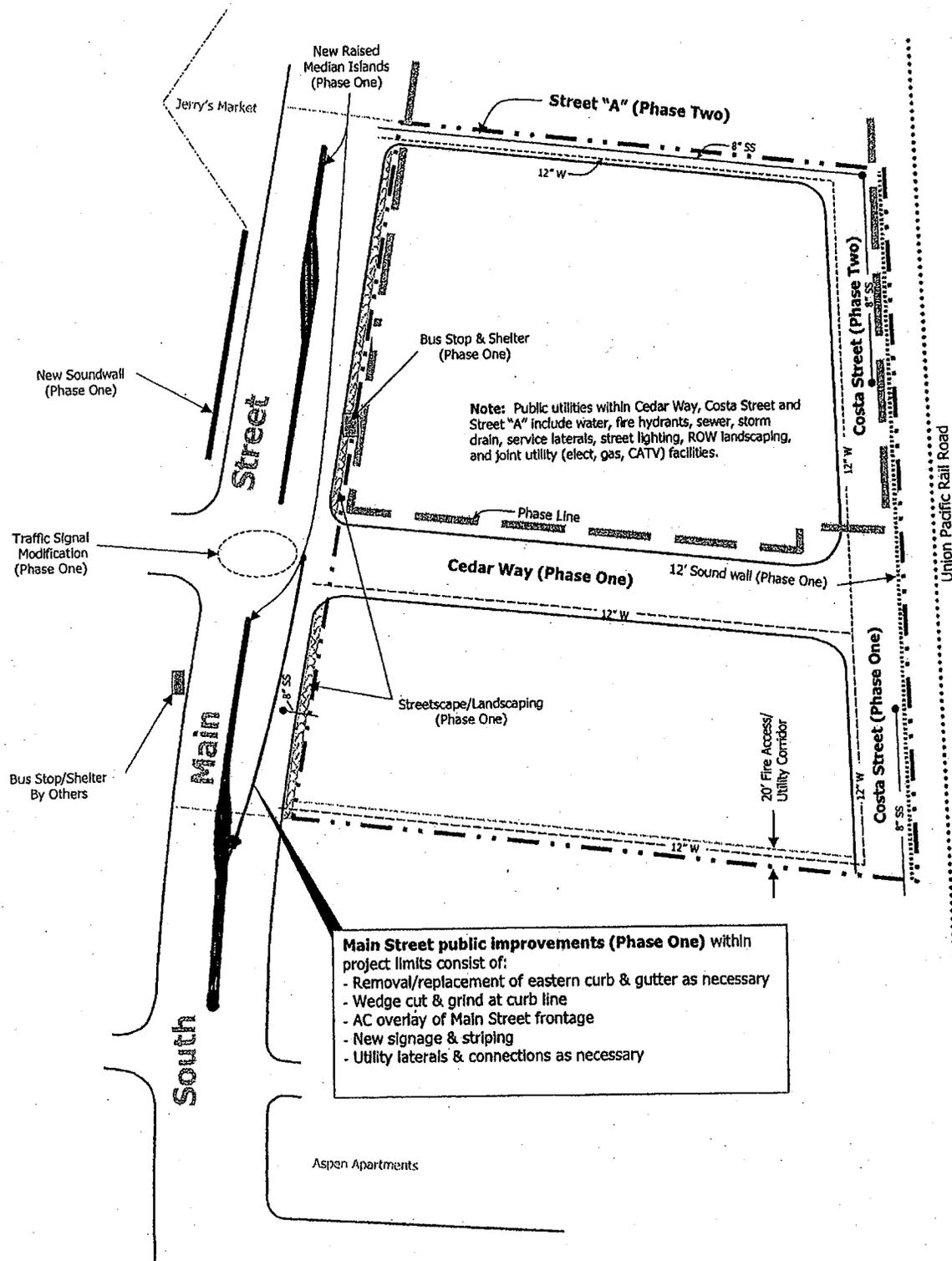
- (i) Use: The use would be changed to the housing description described above in this exhibit, from the currently entitled use of 387 condominium family housing units all at market rate. As detailed in this Exhibit B and the Schedule of Performance (Exhibit D), and as will be specified in the phased Revised VTM, the Project would be built in two sequential phases.
- (ii) Site Utilization/Circulation: The proposed Project requires the following modifications to site circulation from that shown in the Current Entitlements:
- Diaz Street would be removed.
 - Access road right of way on the north of the Property would be reduced to a 25' r.o.w. from the current 37' proposed r.o.w., with the intent that the adjacent parcel to the north would have an additional 25' r.o.w. condition at the time that parcel is developed, thus completing a total of a 50' r.o.w.
 - An emergency access easement of 20' would be recorded and improved with a "grass-crete" driving landscape surface along the south property line (with all required fire and emergency access criteria).
 - A 12' soundwall will be installed along the eastern property boundary adjacent to the railroad in lieu of an 8' soundwall required under the current entitlements
- (iii) Density Bonus: Density Bonus No. DB2008-0001 would apply as per the Current Entitlements.
- (iv) Affordable Housing Requirement: The affordable housing requirements of the Current Entitlements would be modified as follows:
- A transfer of affordability rights from the developer of the Aspen project will not be required due to the proposed project inclusion of affordability as described earlier in this exhibit.
 - The proposed Project would elect to implement the "Affordability Contingency" of the Current Entitlements (i.e., the Project would provide 63 Affordable Units as described earlier in this exhibit).
 - The obligation under the Current Entitlement to provide the Aspen Creek approximately One Million Dollars (\$1,000,000.00) would not apply as an "obligation" of the proposed Project due to the inclusion of the 63 Affordable Units.

- (v) Other Conditions of Approval: All other Conditions of Approval of the Current Entitlements as per Resolution No. 7734 approved by the City Council on February 5, 2008 would apply to the proposed Project.

Attachment No 1 to Exhibit B

Proposed Project Public Improvements

Attachment No. 1 to Exhibit B – Public Improvements



South Main Senior Lifestyle Project

Attachment No. 2 To Exhibit B

Detailed Program Statement For Phase One Development
Services and Amenities

The “Phase One” Development Program statement of the living facilities and associated amenities are described in the following:

The building will be approximately 215,000 habitable square feet in size plus underground parking integrated around exterior courtyards.

The dwelling units will consist of one- and two-bedroom units that will meet the demand for larger living spaces with an abundance of storage area. Each apartment will include a full kitchen with base and overhead cabinets, sink, range with oven and full-size refrigerator; wall-to-wall carpeting in the living room and bedroom areas, vinyl in kitchen and bathroom, pre-wiring for phone and cable TV, and individually controlled heating and air-conditioning will be included in every apartment. All apartments will include a full, private bathroom. The apartments will also have an emergency response system in the bedrooms and baths, smoke alarms, and will be wired to a fire detection and sprinkler system. All apartments will have a stacked washer and a dryer.

Residents will enjoy their own private apartment, decorated living rooms and sitting areas, and full use of the community's amenities. A full spectrum of services will be available to residents, including two to three meals a day, weekly housekeeping, laundry services, scheduled transportation, social activities, 24-hour staff on duty, and Assisted Living services, if desired.

An emergency call system will be provided in each apartment. Apartment pull stations allow residents to report emergency medical or security problems. A resident meal attendance check policy and procedure will be instituted at the retirement community. If a resident has not attended a scheduled meal, a knock on the door with a physical check will follow. In an emergency 911 will be called and family members will be notified.

The facility will accommodate both healthy, active seniors (Independent residents) and more frail seniors (Assisted Living residents). A portion of the living units will be licensed as a boarding home.

- Independent Living - For residents who are ambulatory or semi-ambulatory, alert, and physically and mentally capable of independent management of daily activities.
- Assisted Living - For ambulatory or semi-ambulatory residents who need assistance with activities of daily living. This program is designed to enable continued residency in the retirement community.

Culinary Service Department

The culinary service department will be comprised of a chef-supervisor, three cooks, twelve full and part-time wait-staff and three dishwashers. The chef is responsible for overseeing all staff and activities of the department.

Dining

The Residents have access to three meals a day in our dining area. A team of four servers is on hand at dinner to take resident orders and serve the main course restaurant style. There is a dining room manager who supervises two servers for breakfast. "In" and "Out" doors are marked to ensure safe travel patterns by the staff. The chef will oversee all meal and employee activities within the kitchen and dining room.

Bistro Cafe

The Bistro Cafe will have coffee, tea, and cookies available to all residents seven days a week.

Breakfast Service

Breakfast will have traditional offerings along with menu items that are lower in fat, including fresh seasonal fruits, assisting residents with their dietary needs and concerns.

Lunch Service

Lunch is provided for all independent residents who request it, at an additional charge per lunch. Assisted Living residents will be provided a lunch as part of the State requirement for Assisted Living residents.

Dinner Service

Dinner will feature combinations of appetizers, soups, salads, and entrees that will allow residents to select different dining courses. We will also provide "Small Plates", a program that will offer residents all menu items in smaller portions.

A private dining room will be available to all residents, upon request, for intimate dining with family and friends.

Health and Wellness (Assisted Living) Department

Residents taking Assisted Living services most often ask for assistance with bathing, dressing, medication reminders, security checks, or other personal tasks (known as Activities of Daily Living, or ADL's). Medical services beyond what is allowed in the Limited Nursing Services section of the Boarding Home regulations (WAC 388-78A-265) will not be provided by staff. All residents will be assessed on their current abilities on a quarterly basis, or more often if needed.

Services are available for residents on a 24-hour basis. Staff in the Health & Wellness department are the primary caregivers for ADL assistance. These staff members are based out of the Health & Wellness office, but a majority of their time is spent servicing residents in their apartments. Resident health records and care giving supplies are kept in the Health & Wellness office. The Health & Wellness department is supervised by the Health & Wellness Director, a licensed nurse, who manages all full- and part-time employees.

Medications are stored in locked cupboards in the medication room located in the director's office. If a resident needs "medication reminders" for medication that is prescribed by their physician, the director or a trained staff member can provide assistance with self-administration. The medication room will contain medication administration records, a lockable closet, and a hand-washing sink.

Housekeeping Department

Weekly housekeeping services will be provided to all residents at no extra charge. Supplies will be transported through the community on locked housekeeping carts. Soiled linen will be bagged separately from clean linens and transported directly to the laundry room on the parking level. Incontinent products will be bagged and disposed of directly into the dumpster. Commercial grade washing machines and dryers will be placed in the house laundry room. These machines will be used primarily for resident and community linens and clothing and personal items. Residents will be able to do their own laundry in their apartments.

Program Development

A full-time Activities Coordinator is devoted to overseeing the community activity and program department. The Activities Coordinator's office is on the first floor near the main activity room.

Community activities such as town meetings, plays, shows, shopping trips, scenic tours, travel, cultural events, lectures, classes, arts and crafts, wellness-oriented walks, swimming fitness programs and exercise will be provided and encouraged. In-house activities such as local entertainment by volunteer choir groups, dancing and musical and theatrical groups will be scheduled regularly for resident enjoyment. Non-denominational religious services will be provided for those who wish to participate.

- ❑ Vitality-While there is no magic potion for maintaining physical, emotional and mental well-being, regular physical activity comes close. Members boost flexibility, balance, strength and mental acuity by attending classes in yoga, tai chi and qigong, all offered as part of vitality program. The community fitness areas are furnished with equipment and program designed for the senior body, and trainers available to help create a member's personalized vitality plan.
- ❑ Stay Sharp Centers and a multitude of social activities help maintain emotional and mental well-being. The Stay Sharp Centers allows you to check e-mail, surf the internet, bowl or golf with Nintendo Wii game systems

- Health Program-Professional in natural health and medicine bring members information and services that maintain or improve health. Members discover the benefit of reflexology, massage and naturopathy and learn about the latest news in senior medicine. If members need to visit their doctor or dentist, scheduled transportation makes it ease to make appointments.

- Expanded Activities-A wide variety of recreational activities provide a life full of things members love. They explore new hobbies, attend art events, take a class or visit local attractions. Guest speakers engage their minds and encourage discussion. Book clubs, knitting groups, tulip tours or casino trips are all part of the options.

Many if not all community activities may become available to seniors outside of “SMSL”, providing a great amenity to Milpitas seniors at large.

Exhibit C-1

PRELIMINARY SITE PLAN

**COLLABORATIVE
DESIGN ARCHITECTS 2**
Oceanside, CA
Huntington, HI

6114 LaSalle Avenue
Oceanside
TEL 510 309-8000
ARCHITECT'S STAMP

PMB 465
California 94611-2602
Oceanside
TEL 510 330-1642
CONSULTANT'S STAMP



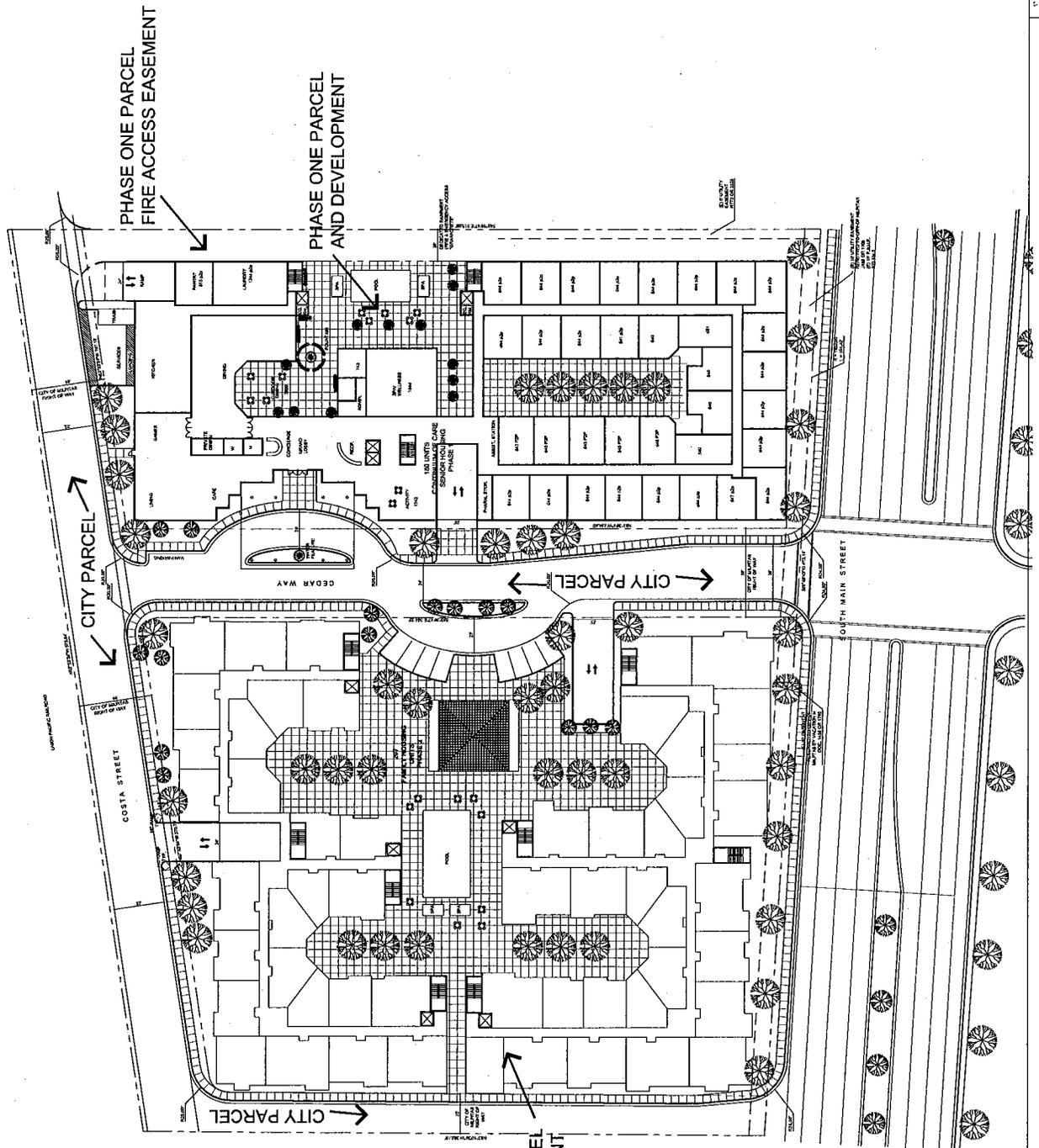
MILPITAS SENIOR HOUSING
1504-1620
South Main Street
Milpitas, California

Project Number: _____
Date: _____

NO.	DATE	DESCRIPTION
1	17 July 2009	SUBMITTALS / REVISIONS

ATTACHMENT B
DEVELOPMENT &
DISPOSITION
AGREEMENT
EXHIBIT C-1
1 of 3

DATE REVISION	DATE REVISION



**COLLABORATIVE
DESIGN ARCHITECTS 2**
Oakland, CA
Hayward, HI

6114 LaSalle Avenue
Oakland
TEL 510 339-6880
ARCHITECTS STAMP
CONSULTANT'S STAMP

PMB 465
California 94611-2832
FAX 510 339-1642



MILPITAS SENIOR HOUSING
1504-1620
South Main Street
Milpitas, California

DATE
17 July 2008

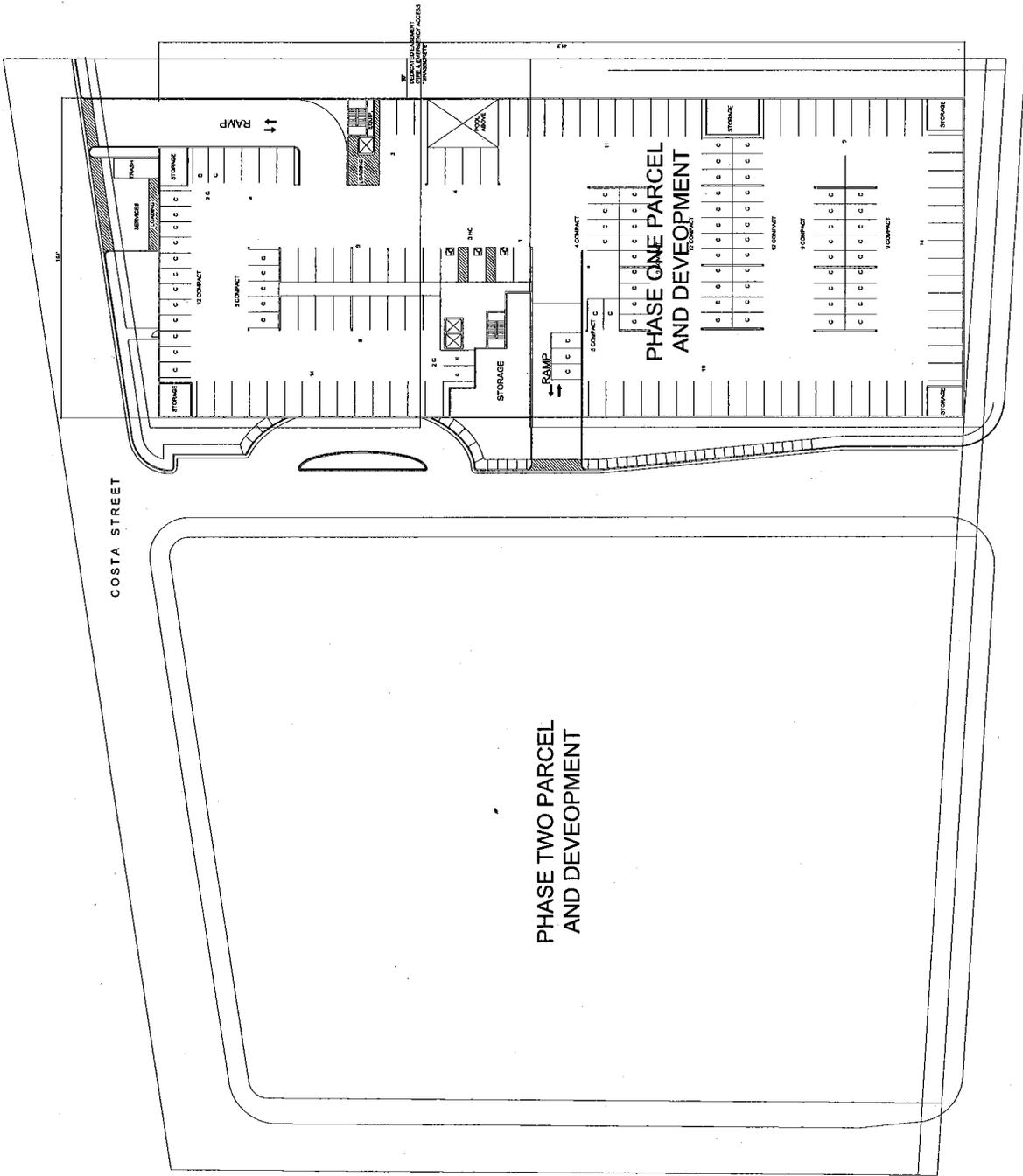
MARK DESCRIPTION
SUBMITTAL # / REVISIONS

ATTACHMENT B

**DEVELOPMENT &
DISPOSITION
AGREEMENT
EXHIBIT C-1**
2 of 3

SUBTERRANEAN PARKING PLAN

DATE PREPARED: 7/17/08
DATE REVISION: 7/17/08
SCALE: AS SHOWN
SHEET NO.: 20
TOTAL SHEETS: 20



PARKING COUNT	
COMPACT	77
STANDARD	101
HANDICAPPED	3
TOTAL STALLS	181

Exhibit C-2

ILLUSTRATIVE REVISED VESTING TENTATIVE MAP

**COLLABORATIVE
DESIGN ARCHITECTS**
Oakland, CA
Hobart, NH

6114 LaSalle Avenue
Oakland, CA 94611-2802
TEL 510.338.8880 FAX 510.338.1692
PROJECT # 1000
CONSULTANT'S STAMP



MILPITAS SENIOR HOUSING
15004-1620
South Main Street
Milpitas, California

DATE
2 June 2009
30 June 2009
2 July 2009
10 July 2009

DESCRIPTION
SUBMITTALS / REVISIONS

ATTACHMENT B

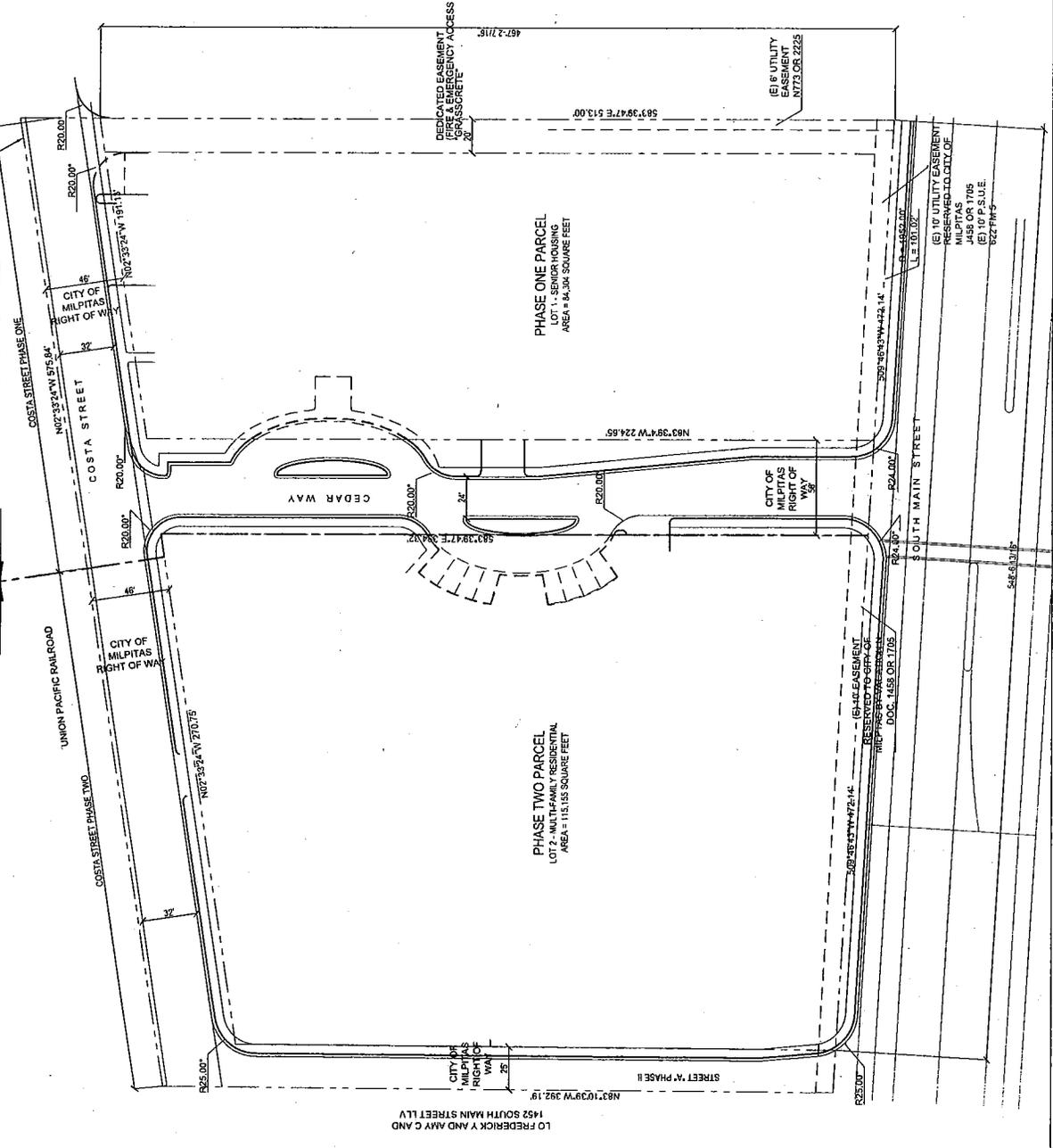
**DEVELOPMENT &
DISPOSITION
AGREEMENT
EXHIBIT C-2**

TERNATIVE VESTING MAP

DATE: 06/10/09
SCALE: AS NOTED
PROJECT: 1000
SHEET: 20 OF 20

NOTE: 12" SOUND WALL ALONG ENTIRE EASTERLY BOUNDARY
WILL BE CONSTRUCTED UNDER PHASE ONE

PHASE TWO DEVELOPMENT | PHASE ONE DEVELOPMENT



Area Tabulation	Square Feet	Acres
Phase One Development Area	84,324.00	1.94
Lot One Area	12,175.00	0.28
Costa Street Phase One Area	23,548.00	0.54
Cedar Way Area	120,027.00	2.76
TOTAL Phase One Development	124,435.00	2.86
Phase Two Development Area	14,304.00	0.33
Lot Two Area	14,304.00	0.33
Costa Street Phase Two Area	133,759.00	3.19
TOTAL Phase Two Development	255,756.00	5.91
20' Fire Access Area (incl. in Phase One Devel.)	9,285.00	0.21
Street 'A' Area (incl. in Phase Two Devel.)	9,280.00	0.21

Exhibit D

SCHEDULE OF PERFORMANCE

Exhibit DSchedule of Performance

This Schedule of Performance summarizes the schedule for various activities under 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. Times for performance are subject to Force Majeure, as further provided in Section 11.2 of the Agreement.

Whenever this Schedule of Performance calls for the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the Agency or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, Developer shall consult with Agency staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

As provided in Section 1.3 of the Agreement, this Schedule of Performance may be modified by Operating Memoranda executed in accordance with Section 11.20 of the Agreement. In addition, the Parties shall cooperate to monitor and implement the scheduling of activities to achieve the milestones set forth in this Schedule of Performance.

	Section Reference	Action	Due Date
A. General Conditions			
1.		Effective Date.	Date that Agreement is authorized by Agency.
2.	1.3.3	Scope of Development for Planning Commission and Agency Review.	Approved upon Agency execution of Agreement.
3.	1.3.3	Preliminary Site Plan for Planning Commission and Agency Review.	Approved upon Agency execution of Agreement.
4.	2.2.2	Remediation Work for Property completed and DTSC issues appropriate remediation closure document.	Prior to and as a condition of Agency obligation to purchase the Property pursuant to the Purchase and Sale Agreement.
5.	1.3.8	Agency acquires Property.	Within closing deadline set in Purchase and Sale Agreement. Date of acquisition is referred to as "Property Acquisition Date."

	Section Reference	Action	Due Date
6.	1.3.8	Execution and recordation of Memorandum of Agreement.	Promptly following Property Acquisition Date.
7.	3.3	Open escrow.	Within 30 days after Property Acquisition Date.
8.	1.3.4.1	Developer submits application for Revised Entitlements.	Within __ days after Property Acquisition Date.
9.	1.3.4.1	City, in its discretion, approves Revised Entitlements.	Prior to Closing for Phase One Parcel.
B. Phase One Development			
1.	1.3.1.1 1.3.1.2	Developer submits applications for CDLAC Award for tax-exempt Bonds, and TCAC preliminary reservation in connection with Tax Credit Equity.	Within __ days after Property Acquisition Date.
2.	1.3.1	Developer submits Financing Plan.	Within __ days after CDLAC Award.
3.	1.3.1	Agency approves Financing Plan.	Within 15 days after receipt from Developer.
4.	1.3.2	Developer submits evidence that construction funds are available, all permits and approvals ready to be issued.	Prior to Closing.
5.	1.3.4	Developer obtains all approvals for Phase One Development, including CEQA review.	Prior to Closing.
6.	1.3.5.1	Developer submits Operator and Operating Agreement.	Not less than 60 days prior to anticipated Closing Date.
7.	1.3.5.1	Agency approves Operator and Operating Agreement.	Within 15 business days after receipt from Developer.
8.	1.3.5.2	Developer submits Services Plan.	Not less than 60 days prior to anticipated Closing Date.
9.	1.3.5.2	Agency approves Services Plan.	Within 15 business days after receipt from Developer.

	Section Reference	Action	Due Date
10.	5.3	Developer submits Construction Plans including final drawings, plans, and specifications to City Building Department.	Within __ days after CDLAC Award.
11.	5.4	Developer applies for building permits.	Within 30 days after City approval of Construction Plans.
12.	1.3.4.3	Developer payment for permits and fees.	Prior to Closing.
13.	5.10(a)	Developer delivers copies of performance and payment bonds.	Prior to Closing.
14.	5.11	Developer provides evidence of insurance, endorsement naming Agency and City as additional insureds; copies of policies.	Prior to Closing.
15.	1.3.6	Execution and recordation of Phase One Regulatory Agreement.	At Closing.
16.	1.3.4.2	Agency records Final Map against Property.	Immediately prior to Closing.
17.	3.6.1	Closing. All conditions to Closing satisfied or waived.	By not later than Phase One Parcel Closing Deadline (24 months after Property Acquisition Date, or later agreed date).
18.	9.3	Disbursement of Agency Grant.	Commencing at Closing and continuing periodically as set forth in Section 9.3.
19.	5.1	Commencement of Construction.	Within 30 days after the Closing Date.
20.	5.1	Completion of Construction.	Within 24 months after commencement of construction.
21.	5.12	Agency issues Certificate of Completion.	Promptly following completion of construction and City issuance of Certificate of Occupancy.
C. Phase Two Development			
1.	3.2.2	Commence process to set Phase Two Parcel Purchase Price	One year prior to anticipated Closing Date

	Section Reference	Action	Due Date
2.	1.3.1	Developer submits Financing Plan.	Not less than 6 months prior to anticipated Closing.
3.	1.3.1	Agency approves Financing Plan.	Within 15 days after receipt from Developer.
4.	1.3.2	Developer submits evidence that construction funds are available, all permits and approvals ready to be issued.	Prior to Closing.
5.	1.3.4	Developer obtains all approvals for Phase Two Development, including CEQA review.	Prior to Closing.
6.	5.3	Developer submits Construction Plans including final drawings, plans, and specifications to City Building Department.	Not less than 4 months prior to anticipated Closing.
7.	5.4	Developer applies for building permits.	Within 30 days after City approval of Construction Plans.
8.	1.3.4.3	Developer payment for permits and fees.	Prior to Closing.
9.	5.10(a)	Developer delivers copies of performance and payment bonds.	Prior to Closing.
10.	5.11	Developer provides evidence of insurance, endorsement naming Agency and City as additional insureds; copies of policies.	Prior to Closing.
11.	3.6.2	Closing. All conditions to Closing satisfied or waived.	By not later than Phase Two Parcel Closing Deadline (24 months after issuance of Certificate of Completion for Phase One Development, or later agreed date).
12.	5.1	Commencement of Construction.	Within 30 days after the Closing Date.
13.	5.1	Completion of Construction for first element of Phase Two Development ("First Element"), consisting of entire subterranean garage, all public streets, utilities, and infrastructure for the Phase Two Development, and at least 110 residential units.	Within 24 months after the commencement of construction.

	Section Reference	Action	Due Date
14.	5.1	Completion of Construction for balance of Phase Two Development.	Within 24 months after completion of construction of the First Element.
15.	5.12	Agency issues Certificate of Completion.	Promptly following completion of construction and City issuance of Certificate of Occupancy for entire Phase Two Development.

Exhibit E-1

**FINANCING PLAN
FOR PHASE ONE DEVELOPMENT**

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.1]

Exhibit E-2

**FINANCING PLAN
FOR PHASE TWO DEVELOPMENT**

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.1]

Exhibit F

FORM OF GRANT DEED

Exhibit FForm of Grant Deed

NOTE: The following form of Grant Deed has been prepared for the Phase One Parcel. With appropriate changes in parcel designation and with deletion of references to the Regulatory Agreement, the same form of Grant Deed will be used for the Phase Two Parcel.

**Recording Requested by
and when Recorded, return to:**

Redevelopment Agency of the City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the "**Grantor**") acting to carry out the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 (the "**Redevelopment Plan**") for redevelopment purposes pursuant to the Community Redevelopment Law of the State of California, hereby grants and conveys to South Main Senior Lifestyle, LLC, a California limited liability company (the "**Grantee**"), the real property (the "**Phase One Parcel**") described in Exhibit A attached hereto and incorporated in this grant deed ("**Grant Deed**") by this reference.

1. The Phase One Parcel is conveyed subject to the Redevelopment Plan and that certain Disposition and Development Agreement entered into by and between the Grantor and the Grantee dated as of August 18, 2009 (the "**DDA**"). The Grantor and the Grantee have executed a Memorandum of Disposition and Development Agreement dated as of August 18, 2009 (the "**Memorandum**") which shall be recorded in the Official Records of Santa Clara County ("**Official Records**") substantially concurrently herewith. The Phase One Parcel is further conveyed subject to certain title conditions, including without limitation an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants executed by and between Grantor and Grantee and dated as of the date hereof (the "**Regulatory Agreement**"). The Regulatory Agreement shall be recorded substantially concurrently herewith.

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that the Grantee and such successors and assigns shall promptly begin and diligently prosecute to completion the redevelopment of the Phase One Parcel through the construction of new improvements (the "**Phase One Development**") in accordance with the DDA, including without limitation the provisions of the DDA that specify time periods for commencement and completion of construction.

Promptly following completion of the Phase One Development in accordance with the DDA and the issuance of a certificate of occupancy for the Phase One Development, the Grantor will furnish the Grantee with an instrument so certifying (a "**Certificate of Completion**"). Such Certificate of Completion shall constitute conclusive determination of satisfactory completion of construction of the Phase One Development and compliance with the covenants in the DDA and in this Grant Deed regarding the dates for the commencement and completion of such construction.

3. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter until the expiration of the Redevelopment Plan, the Grantee shall devote the Phase One Parcel and the Phase One Development only to the uses specified in the Redevelopment Plan and the DDA.

4. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall operate and maintain the Phase One Parcel and the Phase One Development in compliance with all requirements for operation and maintenance set forth in the DDA.

5. The Grantee covenants and agrees, for itself and its successors and assigns that 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, disability, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Phase One Parcel and the Phase One Development, nor shall the Grantee 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 Phase One Parcel and the Phase One Development.

All deeds, leases or contracts made relative to the Phase One Parcel and the Phase One Development or any part thereof, shall contain or be subject to substantially the following non-discrimination clauses:

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)."

6. The Grantee covenants, represents and agrees that the Phase One Parcel and the Phase One Development will be used for the purposes of timely redevelopment as set forth in the DDA and not for speculation in landholding. The Grantee further recognizes that Grantor entered

into the DDA with Grantee and agreed to convey the Phase One Parcel to Grantee in reliance on the qualifications and identity of Grantee, and that the qualifications of Grantee are of particular concern to Grantor, particularly in view of the importance of the redevelopment of the Phase One Parcel to the general welfare of the community, the financial and other assistance provided by Grantor to facilitate development of the Phase One Parcel, and the reliance by Grantor upon the unique qualifications and ability of the Grantee to serve as the catalyst for development of the Phase One Parcel. Grantee covenants, for itself and its successors and assigns, that there shall be no sale, transfer, assignment, conveyance, lease, pledge or encumbrance of the DDA or the Phase One Parcel and the Phase One Development thereon or any part thereof, or of any ownership interest in the Grantee in violation of the DDA. No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this Grant Deed or the DDA except as expressly set forth in this Grant Deed or the DDA.

7. The covenants contained in Sections 2 and 3 regarding construction shall remain in effect until the issuance of a Certificate of Completion pursuant to DDA, and the covenants in Section 4 regarding use, operation and maintenance shall remain in effect for the life of the Redevelopment Plan. The covenants against discrimination contained in Section 5 shall remain in effect in perpetuity. The covenants against prohibited sales, transfers, assignments, conveyances, leases, pledges and encumbrances contained in Section 6 shall remain in effect for the period set forth in the DDA.

8. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Phase One Parcel and the Phase One Development shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

9. The covenants contained in Sections 2, 3, 4, 5 and 6 of this Grant Deed, without regard to technical or legal classification or designation specified in this Grant Deed or otherwise, shall to the fullest extent permitted by law and equity, be binding upon Grantee and any successor in interest to the Phase One Parcel and the Phase One Development or any part thereof, for the benefit of Grantor, and its successors and assigns, and such covenants shall run in favor of and be enforceable by the Grantor and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and its successors and assigns shall have the right to exercise all rights and remedies available under law or in equity to enforce the curing of such breach.

10. Subject to and in accordance with the procedures and provisions of Section 10.6 of the DDA, the Grantor shall have the right, at its option, to re-enter and take possession of the Phase One Parcel, or portion thereof, with all improvements thereon, and revert in the Grantor the estate conveyed to the Grantee, in the event of a default arising under Section 10.6 of the DDA.

11. Subject to and in accordance with the procedures and provisions of Section 10.7 of the DDA, the Grantor shall have the right, at its option, to repurchase and take possession of

the Phase One Parcel, or portion thereof, with all improvements thereon, and revert in the Grantor the estate conveyed to the Grantee, in the event of a default arising under Section 10.7 of the DDA.

The Grantor shall have the right to institute such actions or proceedings as it may deem desirable to effectuate the purposes of Sections 10 and 11 hereof. Any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights hereunder shall not operate as a waiver of or limitation on such rights, nor operate to deprive Grantor of such rights, nor shall any waiver made by the Grantor with respect to any specific default by the Grantee, its successors and assigns, be considered or treated as a waiver of Grantor's rights with respect to any other default by the Grantee, its successors and assigns, or with respect to the particular default except to the extent specifically waived.

12. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Phase One Parcel and the Phase One Development shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed or to subject the Phase One Parcel and the Phase One Development to additional covenants, easements, or other restrictions. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Phase One Parcel and the Phase One Development in fee title, and not to include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Phase One Parcel and the Phase One Development.

13. In the event there is a conflict between the provisions of this Grant Deed and the DDA, it is the intent of the parties that the DDA shall control.

14. This Grant Deed may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant Deed as of this 1st day of August, 2006.

GRANTOR:

**REDEVELOPMENT AGENCY OF THE CITY OF
MILPITAS,**
a public body, corporate and politic

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Agency Counsel

SIGNATURES CONTINUE ON FOLLOWING PAGE

GRANTEE:

SOUTH MAIN STREET SENIOR HOUSING, LLC
a California limited liability company

By: Callahan Senior Living Associate III, LLC
A California limited liability company,
Its Co-Managing Member

By: _____
Joseph W. Callahan,
Managing Member

By: Collaborative Senior Living I, LLC
A California limited liability company,
Its Co-Managing Member

By: _____
James R. Burns II,
Managing Member

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

Exhibit A

PHASE ONE PARCEL

Real property in the City of Milpitas, County of Santa Clara, State of California,
described as follows:

[To Be Inserted]

Exhibit G

**FORM OF MEMORANDUM OF
DISPOSITION & DEVELOPMENT AGREEMENT**

Exhibit GForm of Memorandum of
Disposition and Development Agreement**Recording Requested by
and when Recorded, return to:**

Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attn: Executive Director

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

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

This Memorandum of Disposition and Development Agreement (this "**Memorandum**") dated as of August 18, 2009, is entered into by and between the Redevelopment Agency of the City of Milpitas, a public agency ("**Agency**") and South Main Senior Lifestyle, LLC, a California limited liability company ("**Developer**").

1. Consistent with California Community Redevelopment Law (Health & Safety Code Section 33000 *et seq.*) and the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 ("**Project Area**"), Agency and Developer have entered into that certain Disposition and Development Agreement, dated as of the date hereof (the "**DDA**"), pursuant to which Agency has agreed to convey to Developer and Developer has agreed to develop certain real property (the "**Property**") located within the Project Area and more particularly described in Exhibit A attached hereto and incorporated herein by this reference. Capitalized terms used but not defined in this Memorandum have the meanings given in the DDA.

2. Among other conditions, the DDA provides that Developer shall develop a two-phased residential complex on portions of the Property generally as follows: (i) the Phase One Development on the Phase One Parcel portion of the Property, containing an approximately one hundred eighty (180) unit continuum of care senior housing residential rental development, including at least sixty-three (63) affordable rental units, as fully set forth in the Phase One Regulatory Agreement to be recorded in the Official Records of Santa Clara County substantially concurrently herewith; and (ii) the Phase Two Development on the Phase Two Parcel portion of the Property, containing an approximately two hundred seven (207) unit family housing development.

3. The DDA further provides that (i) except as permitted by the DDA, Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Property or the improvements located thereon without the prior written approval of the Agency; and (ii) any transferee of all or part of the Property

shall be subject to and shall expressly assume all of the covenants, obligations and restrictions of the DDA which pertain to the portion of the Property transferred, including without limitation, the affordability restrictions imposed by the DDA and the Phase One Regulatory Agreement.

4. Developer and Agency have executed and recorded this instrument to give notice of the DDA, the Phase One Regulatory Agreement (with respect to the Phase One Parcel only), and the respective rights of Developer and Agency thereunder, including without limitation, the Agency's reversionary interests in the Phase One Parcel or the Phase Two Parcel, as applicable, in the event of certain defaults under the DDA. Copies of the unrecorded DDA are available at the offices of the Agency, 455 East Calaveras, Milpitas California, and such document is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the DDA, the DDA shall control.

5. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws.

6. The DDA shall bind and inure to the benefit of the Developer and the Agency and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first set forth above.

AGENCY:

**REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS**, a public body, corporate and politic

By: _____

Name: _____

Its: _____

Attest:

Agency Secretary

Approved as to Form:

Agency Counsel

SIGNATURES CONTINUE ON FOLLOWING PAGE

DEVELOPER:

SOUTH MAIN STREET SENIOR HOUSING, LLC
a California limited liability company

By: Callahan Senior Living Associate III, LLC
A California limited liability company,
Its Co-Managing Member

By: _____
Joseph W. Callahan,
Managing Member

By: Collaborative Senior Living I, LLC
A California limited liability company,
Its Co-Managing Member

By: _____
James R. Burns II,
Managing Member

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

Exhibit A

PROPERTY

Real property in the City of Milpitas, County of Santa Clara, State of California,
described as follows:

[To Be Inserted]

Exhibit H

**FORM OF PHASE ONE
REGULATORY AGREEMENT**

Exhibit H

Form of Phase One Regulatory Agreement

**Recording requested by and when recorded
mail to:**

Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

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

(Space above this line for Recorder's use.)

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

SOUTH MAIN SENIOR LIFESTYLE, LLC

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 201__ ("**Effective Date**") by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the "**Agency**") and South Main Senior Lifestyle, LLC, a California limited liability company ("**Owner**"). Agency and Owner are hereinafter collectively referred to as the "**Parties.**"

RECITALS

A. Owner has purchased or shall purchase from the Agency the real property located on South Main Street in the City of Milpitas, California and more particularly described in Exhibit A attached hereto (the "**Phase One Parcel**").

B. Owner intends to construct, own and operate on the Phase One Parcel a one hundred eighty (180)-unit "continuum of care" senior housing rental development (the "**Phase One Development**"), including specified units for very low-income and low-income senior households as set forth in this Agreement, in accordance with that certain Disposition and Development Agreement (the "**DDA**") dated as of August 18, 2009, executed by and between Owner and Agency, a memorandum of which shall be recorded substantially concurrently herewith, in the Official Records of Santa Clara County. The Phase One Development will include forty-five (45) assisted living units (the "**Assisted Living Units**") and one hundred thirty-five (135) congregate care units (the "**Congregate Care Units**").

C. The DDA provides that no fewer than sixty-three (63) of the residential units in the Phase One Development shall be affordable to and occupied by or available for occupancy by very low-income and low-income senior households for a period of not less than fifty-five (55) years.

D. Pursuant to the DDA, Agency has agreed to provide to Owner a grant in the amount of Seven Million Two Hundred Thousand (\$7,200,000) (the "**Grant**").

E. In connection with the approved funding for the Phase One Development pursuant to the DDA, Owner has obtained a loan consisting of the net proceeds from the issuance of tax-exempt residential rental bonds and a reservation for low and moderate income housing tax credits for procurement of tax credit syndication equity, all in accordance with applicable rules and regulations of the Federal Internal Revenue Code for such bonds and tax credits (as in effect from time to time, the "**IRC Rules and Regulations**").

E. As a condition to its agreement to convey the Phase One Parcel and provide the Grant to Owner, Agency requires the Phase One Parcel to be subject to the conditions, restrictions, reservations and rights of the Agency set forth herein.

F. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Phase One Development's Restricted Units (as defined below) for the benefit of the Phase One Development's occupants. The covenants in this Agreement are

intended to run with the land and be binding on Owner and Owner's successors and assigns for the full term of this Agreement.

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

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

"Adjusted Income" means the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 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 exists, the Agency shall provide the Owner with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

"Area Median Income" or "AMI" means the area median income for Santa Clara County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development ("**HCD**") as published in Section 6932 of Title 25 of the California Code of Regulations ("**Regulations**") or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

"Assumed Household Size" means the assumed household size determined in accordance with the IRC Rules and Regulations so long as the IRC Rules and Regulations apply to the Phase One Development, and otherwise means two (2) persons for each one-bedroom unit that is a Restricted Unit.

"Basic Supportive Services Fees" means the total of monthly payments by the tenants of a dwelling unit for the following: three (3) meals daily, plus snack, and tray service when medically indicated; scheduled transportation to shopping, banking, medical appointments and religious services; weekly housekeeping; social, cultural, physical fitness and educational programs; twenty-four (24) hour emergency system monitoring; personal care, assistance with bathing; observation and assessment of general health and ability to perform activities of daily living; and other health and wellness-related services and expenses.

"Eligible Household" means a Very Low-Income Household or a Low-Income Household that also meets the requirements set forth in Section 2.1.

"Low-Income Household" means a household that meets the requirements set forth in Section 2.1 and that has an annual Adjusted Income that is less than or equal to eighty percent (80%) of AMI.

"Low-Income Unit" has the meaning given in Section 2.4(b).

"Qualifying Rent" has the meaning given in Section 2.4.

"Rent" means the total of monthly payments by the tenants of a dwelling unit for the following: use and occupancy of the unit and land and associated facilities; any separately charged fees or service charges assessed by Owner which are required of all tenants, but excluding security deposits and Basic Supportive Services Fees; 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.

"Restricted Unit" means a dwelling unit which is reserved for occupancy at a Qualifying Rent by a Very Low-Income or Low-Income Household in accordance with and as set forth in Sections 2.2, 2.3, and 2.4. Restricted Units include the Very Low-Income Units and the Low-Income Units.

"Very Low-Income Household" means a household that meets the requirements set forth in Section 2.1 and that has an annual Adjusted Income that is less than or equal to fifty percent (50%) of AMI.

"Very Low-Income Unit" has the meaning given in Section 2.4(a).

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that during the term of this Agreement the Phase One Parcel shall be used solely for the construction and operation of the Phase One Development, consisting of a one hundred eighty (180)-unit "continuum of care" multifamily rental housing development in compliance with the DDA, the development approvals granted by the City of Milpitas, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of Agency. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Phase One Development require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1 Senior Housing. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Phase One Development, all one hundred eighty (180) of the dwelling units in the Phase One Development shall be restricted for occupancy by households in which at least one member is a person sixty-two (62) years of age or older. Residency by other persons in such dwelling units shall be in compliance with Section 51.3 of the California Civil Code.

2.2 Affordability Requirements In General. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Phase One Development, sixty-three (63) of the dwelling units in the Phase One Development shall be

Restricted Units occupied (or if vacant, available for occupancy) by Eligible Households with incomes as set forth in Section 2.3, and rented at Qualifying Rents as set forth in Section 2.4.

2.3 Eligible Households Income Limits. The Restricted Units shall be occupied (or if vacant, available for occupancy) as follows:

- (a) Nine (9) one-bedroom Assisted Living Units shall be occupied (or if vacant, available for occupancy) by Very Low-Income Households;
- (b) Seven (7) one-bedroom Assisted Living Units shall be occupied (or if vacant, available for occupancy) by Low-Income Households;
- (c) Twenty-seven (27) one-bedroom Congregate Care Units shall be occupied (or if vacant, available for occupancy) by Very Low-Income Households; and
- (d) Twenty (20) one-bedroom Congregate Care Units shall be occupied (or if vacant, available for occupancy) by Low-Income Households.

2.4 Rents for Restricted Units. Rents for the Restricted Units shall be limited to the following (referred to herein as "**Qualifying Rents**"):

- (a) For the Restricted Units occupied or available for occupancy by Very Low-Income Households (each a "**Very Low-Income Unit**"), Rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size; and
- (b) For the Restricted Units occupied or available for occupancy by Low-Income Households (each a "**Low-Income Unit**"), Rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of eighty (80%) of AMI, adjusted for Assumed Household Size.

2.5 Increased Income of Households.

(a) In the event that recertification of a Very Low-Income Household's income indicates that the household's Adjusted Income has increased and exceeds the qualifying income for a Very Low-Income Household, but qualifies it as a Low-Income Household, then (i) such household's dwelling unit shall be considered a Low-Income Unit, (ii) the Rent for such unit may be increased to one-twelfth (1/12) of thirty percent (30%) of eighty percent (80%) of AMI, adjusted for Assumed Household Size, upon sixty (60) days written notice to the household, and (iii) Owner shall rent the next available dwelling unit of the applicable unit type (i.e., an Assisted Living Unit if the applicable over-income household is occupying an Assisted Living Unit, or a Congregate Care Unit if the applicable over-income household is occupying a Congregate Care Unit) to a Very Low-Income Household to comply with the requirement of Section 2.3.

(b) In the event that recertification of a Very Low-Income Household's or a Low-Income Household's income indicates that the household's Adjusted Income exceeds the qualifying income for a Low-Income Household, then (i) such household's

dwelling unit shall be considered a Low-Income Unit, (ii) in the case of a former Very Low-Income Household, the Rent for such unit may be increased to one-twelfth (1/12) of thirty percent (30%) of eighty percent (80%) of AMI, adjusted for Assumed Household Size, upon sixty (60) days written notice to the household, (iii) in the case of a former Low-Income Household, the Rent for such unit shall remain at one-twelfth (1/12) of thirty percent (30%) of eighty percent (80%) of AMI, adjusted for Assumed Household Size, and (iv) Owner shall rent the next available dwelling unit of the applicable unit type (i.e., an Assisted Living Unit if the applicable over-income household is occupying an Assisted Living Unit, or a Congregate Care Unit if the applicable over-income household is occupying a Congregate Care Unit) to a Very Low-Income Household or a Low-Income Household, as applicable, to comply with the requirement of Section 2.3. Once the next available unit has been rented to a Very Low-Income Household or a Low-Income Household, as applicable in accordance with clause (iv) above, the Rent for the over-income household may be increased to market rate rent.

(c) Upon termination of occupancy of a Very Low-Income or Low-Income Unit, such unit shall be deemed to be continuously occupied by a household of the same income level (i.e., a Very Low-Income Household or a Low-Income Household) as the initial income level of the vacating household, until such unit is reoccupied, at which time the income character of the unit (i.e., as a Very Low-Income Unit or a Low-Income Unit) shall be re-determined.

(d) While the IRC Rules and Regulations apply to the Phase One Development, Owner shall be subject to and shall comply with the rent requirements for households whose incomes exceed the eligible income limitations as set forth in such IRC Rules and Regulations in place of the requirements in this Section 2.5.

2.6 Unit Sizes, Design and Location. The Restricted Units shall consist of one-bedroom Assisted Living Units and Congregate Care Units allocated between income categories as more particularly set forth in Section 2.3. In renting Restricted Units, Owner shall give first preference to Eligible Households in which at least one member lives or works in the City of Milpitas, second preference to Eligible Households in which at least one member is the parent of a person who lives or works in the City of Milpitas, and third preference to Eligible Households in which at least one member lives or works in the County of Santa Clara, unless compliance with the foregoing criteria is prohibited by law or by state or federal sources of financing for the Phase One Development.

2.7 No Condominium Conversion. Owner shall not convert the Phase One Development to condominium or cooperative ownership or sell condominium or cooperative rights to the Phase One Development during the term of this Agreement.

2.8 Non-Discrimination; Compliance with Fair Housing Laws.

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

2.8.2 Non-Discrimination. Owner covenants for and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry, disability or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Phase One Parcel or the Phase One Development, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Phase One Development. The foregoing covenant shall run with the land. All deeds, leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Phase One Parcel or the Phase One Development shall contain 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)."

3. Reporting Requirements.

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

- (a) The identity and age of the resident who is age sixty-two (62) or older;
- (b) The identity and age of each other member of the household or

such other information reasonably required to demonstrate compliance with Section 2.1 above;
and

(c) Total household income.

Owner shall retain such certificates for not less than three (3) years, and upon Agency's request, shall make the originals available for inspection by Agency and shall provide copies of such certificates to Agency.

3.2 Annual Report; Inspections. Owner shall submit an annual report ("Annual Report") to the Agency in form satisfactory to Agency, together with a certification that the Phase One Development is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each Restricted Unit in the Phase One Development: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Upon Agency's request, Owner shall include with the Annual Report the following documentation for each Restricted Unit: an income recertification for each household, documentation verifying tenant eligibility, and such additional information as Agency may reasonably request from time to time in order to show compliance with this Agreement. The Annual Report shall conform to the format requested by Agency; provided however, during such time that the Phase One Development is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing Agency with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Agency to enter and inspect the Phase One Parcel and the Phase One Development during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the (fifty-fifth) 55th anniversary of the issuance of the final certificate of occupancy for the Phase One Development.

4.2 Effectiveness Succeeds Conveyance of Phase One Parcel. This Agreement shall remain effective and fully binding for the full term hereof regardless of any sale, assignment, transfer, or conveyance of the Phase One Parcel or the Phase One Development or any part thereof or interest therein, unless this Agreement is terminated earlier by Agency in a recorded writing.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, the execution and recordation of such instruments shall not be

necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Phase One Parcel and the Phase One Development to the covenants and restrictions set forth in this Agreement. The Agency and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and Agency, regardless of any sale, assignment, conveyance or transfer of the Phase One Parcel, the Phase One Development or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Phase One Parcel or the Phase One Development (other than the tenants of the individual dwelling units within the Phase One Development) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Phase One Parcel or the Phase One Development or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to Agency an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Phase One Parcel and the Phase One Development in favor of Agency.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Phase One Parcel and the Phase One Development, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as Agency may otherwise agree in writing, Agency shall have no responsibility for management or maintenance of the Phase One Parcel or the Phase One Development.

6.2 Management Entity. Agency shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Phase One Development (the "**Operator**") in the manner set forth in Section 1.3.5.1 of the DDA. The Agency hereby approves _____ as the initial Operator for the Phase One Development. The contracting of management services to an Operator shall not relieve Owner of its primary responsibility for proper performance of management duties.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Phase One Parcel and the Phase One

Development in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Phase One Parcel and the Phase One Development (including without limitation, the residential units, common meeting rooms, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Phase One Parcel or at the Phase One Development. Owner shall prevent and/or rectify any physical deterioration of the Phase One Parcel and the Phase One Development and shall make all repairs, renewals and replacements necessary to keep the Phase One Parcel and the Phase One Development in good condition and repair. Owner shall provide adequate security services for occupants of the Phase One Development.

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

6.4 Services Plan; Marketing and Management Plan.

6.4.1 Services Plan. Owner shall submit and obtain Agency approval of a services plan for the provision of support services and amenities to residents of the Phase One Development (the "**Services Plan**"), and any subsequent material revisions to a previously approved Services Plan, within the time and in the manner set forth in Section 1.3.5.2 of the DDA. As of the Effective Date, Agency has approved the initial Services Plan. Owner shall abide by the terms of the approved Services Plan in providing support services and amenities to residents of the Phase One Development.

6.4.2 Marketing and Management Plan. Not later than one hundred eighty (180) calendar days following the issuance of the first building permit for the Phase One Development, Owner shall submit for Agency review and approval, a plan for marketing and managing the Phase One Parcel and the Phase One Development ("**Marketing and Management Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Marketing and Management Plan shall also describe the management team and shall address how the Owner and the Operator plan to manage and maintain the Phase One Parcel and the Phase One Development. The Marketing and Management Plan shall include the proposed form of rental agreement that Owner proposes to enter into with Phase One

Development tenants. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Phase One Parcel and the Phase One Development, and throughout the term of this Agreement, shall submit proposed modifications to Agency for its review and approval.

6.5 Approvals. If Agency has not responded to any submission of the Services Plan or the Management and Marketing Plan in accordance with Section 6.4, the proposed Operator in accordance with Section 6.2, or a proposed amendment or change to any of the foregoing within thirty (30) days following Agency's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Agency.

6.6 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public authority or utility company with respect to the Phase One Parcel or the Phase One Development, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.

6.7 Insurance Coverage. Prior to issuance of building permits for the Phase One Development, and continuing throughout the term of this Agreement Owner shall comply with the requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B; provided however, during such time that lenders or low-income housing tax credit investors providing financing for the Phase One Development impose insurance requirements that are inconsistent with the requirements set forth in Exhibit B, Owner may satisfy the requirements of this Section by meeting the requirements of such lenders or investors. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of Exhibit B pertaining to (i) provision to Agency of proof of insurance for the Phase One Development, (ii) naming of Agency and the City of Milpitas as additional insureds, and (iii) provision to Agency of notice of cancellation or reduction in coverage.

6.8 Property Damage or Destruction. If any part of the Phase One Development is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed within one year thereafter, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Phase One Development impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Santa Clara County. Owner hereby represents, warrants and covenants that with the exception of the Agency Documents (as defined in the DDA) and easements of record, absent the written consent of Agency, this Agreement shall not be subordinated in priority to any lien (other

than those pertaining to taxes or assessments), encumbrance, or other interest in the Phase One Parcel or the Phase One Development. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Phase One Development in position superior to this Agreement, upon the request of Agency, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as Agency may reasonably request. Notwithstanding the foregoing, Agency shall not unreasonably withhold, delay or condition its consent to subordination of the lien of this Agreement to a lien or encumbrance required by a lender or governmental entity in connection with financing for the Phase One Development consistent with the approved Financing Plan (as defined and described in Section 1.3.1).

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the DDA or this Agreement, Owner shall not make or permit the occurrence of any Transfer (as defined in the DDA) of the Phase One Development or the Phase One Parcel without the prior written consent of the Agency; provided however, neither a Transfer by Owner to a limited partnership (the "**Limited Partnership**") in which Owner is the managing general partner for purposes of creating an ownership structure to obtain low-income housing tax credit equity, the admission of an investor limited partner to such Limited Partnership, nor the transfer by the investor limited partner to an entity in which an affiliate is the general partner or managing member shall require Agency consent.

8.2 Permitted Transfers. In addition to Transfers otherwise permitted pursuant to the DDA, the Agency shall not withhold, delay or condition its consent to the following Transfers: (i) a transfer from the Limited Partnership to an entity which is controlled by or is under common control with the Limited Partnership's managing general partner (a "**Controlled Affiliate**"); (ii) a transfer of the initial limited partner's interest into an investor limited partner or partners, or subsequent transfers of such interests by the investor limited partner(s); (iii) a transfer from an investor limited partner to the Limited Partnership's managing general partner or a Controlled Affiliate; (iv) a transfer of the managing general partner's interest in the Limited Partnership to a Controlled Affiliate; or (v) a transfer to the construction or permanent lender for the Phase One Development or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Phase One Development or to any subsequent transfer by such lender or third party following such foreclosure, deed in lieu of foreclosure or comparable conversion; provided that: (a) prior to any of the foregoing Transfers (other than to a third party following foreclosure), Owner, the Limited Partnership or the proposed owner shall provide Agency with a copy of the transferee's organizational documents and the final form of the agreement effectuating such transfer, (b) the Phase One Development is and shall continue to be operated in compliance with this Agreement, and (c) the transferee executes all documents reasonably requested by the Agency with respect to the assumption of the Owner's or the Limited Partner's obligations under this Agreement, and upon reasonable request of Agency, delivers to the Agency an opinion of transferee's counsel to the effect that this Agreement is the valid, binding and enforceable obligation of such transferee.

In addition, Agency shall not withhold, delay or condition its consent to the sale,

transfer or other disposition of the Phase One Parcel and the Phase One Development, in whole or in part, provided that (1) the Phase One Development is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the Agency with respect to the assumption of the Owner's obligations under this Agreement, and upon Agency's request, delivers to the Agency an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three (3) years' experience in the ownership, operation and management of a "continuum of care" senior rental housing project that includes low income tenants and that is of similar size to that of the Phase One Development, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A).

In the event a general partner of Owner or the Limited Partnership is removed by the limited partner thereof for cause following default under the partnership agreement, the Agency hereby approves the transfer of the general partner interest to another party that is selected by the limited partner and approved by Phase One Development lender(s); provided that (i) following such transfer, the Phase One Development shall continue to be operated in compliance with this Agreement, and (ii) such party meets the requirements of clause (4) of the preceding paragraph.

8.3 Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Phase One Development for the benefit of a lender other than Agency ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to Agency a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) Agency shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure; (iii) Agency shall have the right to exercise any remedies afforded to it under the Agency Documents (as defined in the DDA) in connection with any default declared by the Third-Party Lender, provided that Agency has cured any default under Third-Party Lender's deed of trust and other loan documents; and (iv) if Agency acquires the Phase One Parcel and Phase One Development, Agency shall have the right to transfer the Phase One Parcel and Phase One Development without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Phase One Development as an affordable rental housing project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to Agency a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Phase One Development or the Phase One Parcel, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, Agency shall

give written notice to the holders of record of any mortgages or deeds of trust encumbering the Phase One Development or the Phase One Parcel that such violation has occurred.

9. Default and Remedies.

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

- (a) The occurrence of a Transfer in violation of Section 8 hereof;
- (b) Owner's failure to maintain insurance on the Phase One Parcel and the Phase One Development as required hereunder, and the failure of Owner to cure such default within 10 days.
- (c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Phase One Parcel or the Phase One Development or failure to pay any other charge that may result in a lien on the Phase One Parcel or the Phase One Development, and Owner's failure to cure such default within 10 days.
- (d) Owner's default in the performance of any term, provision or covenant under this Agreement or under any other Agency Document (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Agency shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than one hundred twenty (120) days from receipt of the notice of default.

The limited partners of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner. Provided that Agency has been given written notice of the address for delivery of notices to the limited partners, Agency shall provide any notice of default hereunder to the limited partners concurrently with the provision of such notice to Owner, and as to the limited partners, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Subsection 11.4.

9.2 Remedies. If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, Agency may proceed with any of the following remedies:

- (a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(b) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;

(c) Pursue any other remedy allowed at law or in equity.

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

10. Indemnification. Notwithstanding the insurance coverage required hereunder, Owner shall defend, indemnify and hold the Agency and its officials, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of (1) Owner's failure to perform any obligation as and when required by this Agreement; (2) any failure of Owner's representations or warranties to be true and complete in all material respects when made; or (3) any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Phase One Development or the Phase One Parcel, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party. Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section. The duty of Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Phase One Development or the Phase One Parcel with counsel reasonably approved by Agency. Owner's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

11. Miscellaneous.

11.1 Reserved.

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

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

11.4 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective

addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency: Redevelopment Agency of the City of Milpitas
 455 East Calaveras
 Milpitas, CA 95035
 Attention: Executive Director

Owner: South Main Senior Lifestyle, LLC

 Attention: _____

**Investor Limited
 Partner:** _____

 Attention: _____

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

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

11.7 Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Agency is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Agency Executive Director or by any person who shall have been

designated by the Agency Executive Director, without further approval by the governing board of the Agency.

11.8 Non-Liability of Agency and Agency Officials, Employees and Agents.

No member, official, employee or agent of the Agency or the City of Milpitas shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the Agency, or for any amount of money which may become due to Owner or its successor or for any obligation of Agency under this Agreement.

11.9 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

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

11.11 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

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

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

11.14 Entire Agreement; Exhibits. This Agreement, together with the Agency Documents (as defined in the DDA) contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.

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

SIGNATURES ON FOLLOWING PAGE.

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

**SOUTH MAIN STREET SENIOR HOUSING, LLC
a California limited liability company**

By: Callahan Senior Living Associate III, LLC
a California limited liability company,
its Co-Managing Member

By: _____
Joseph W. Callahan, Managing Member

By: Collaborative Senior Living I, LLC, a California
limited liability company, its Co-Managing Member

By: _____
James R. Burns II, Managing Member

**REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS**

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Agency Counsel

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

Exhibit A

PHASE ONE PARCEL

Real property in the City of Milpitas, County of Santa Clara, State of California,
described as follows:

[To Be Inserted]

Exhibit B

INSURANCE REQUIREMENTS

Prior to issuance of building permits for the Phase One Development and throughout the term of this Agreement, Owner shall obtain and maintain, at Owner's expense, the following policies of insurance.

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Phase One Parcel or the Phase One Development, in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Phase One Parcel, and (b) cover floods if the Phase One Parcel is in a Special Hazard Area, as determined by the Federal Emergency Management Agency or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars (\$10,000) deductible (or such higher deductible approved by the Agency, which approval shall not be unreasonably withheld) from the loss payable for any casualty. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Phase One Parcel and the Phase One Development. The limits of liability under this Paragraph B shall be not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars (\$10,000) or such higher deductible as may be approved by Agency, which approval shall not be unreasonably withheld.

The insurance shall also include coverage for:

(i) liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Phase One Development or the Phase One Parcel;

(ii) premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Phase One Parcel or the Phase One Development on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;

(iii) broad form property damage liability;

(iv) additional insured and primary insured endorsements protecting the Agency, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;

(v) personal injury endorsement.

C. Worker's Compensation Insurance. Worker's compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Phase One Parcel or engaged in services or operations in connection with the Phase One Development or the Phase One Parcel. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Phase One Parcel include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Phase One Parcel.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A-VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the issuance of building permits for the Phase One Development, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit B, Owner shall deliver to Agency certificates evidencing the insurance required to be carried by Owner under this Exhibit B. If requested by Agency, Owner shall deliver within ten (10) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided hereunder shall meet the following requirements:

(a) Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide (i) a waiver by the insurer of the right of subrogation against Agency, the City of Milpitas, Owner or any tenant of the Phase One Development for negligence of any such person, (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and (iii) a provision that no act or omission of Owner which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(b) By endorsements, Agency and the City of Milpitas, and their respective elected and appointed officials, officers, employees and agents shall be named as additional insured under the liability insurance required to be maintained by Owner hereunder. Agency shall be named as loss payee on the property insurance policies required to be maintained hereunder.

(c) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Agency.

(d) All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

(e) Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with Agency prior to commencement of construction of the Phase One Development.

(f) Each policy shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

(g) Each policy shall be written as a primary policy not contributing with and not in excess of coverage that Agency may carry.

(h) Each policy shall expressly provide that Agency shall not be required to give notice of accidents or claims and that Agency shall have no liability for premiums.

F. Blanket Policies. Any insurance provided for in this Exhibit B may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Phase One Parcel and the Phase One Development shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Agreement.

G. Waiver of Subrogation. To the extent permitted by law and the policies of insurance required to be maintained hereunder, and without affecting such insurance coverage, Agency and Owner each waive any right to recover against the other (a) damages for injury or death of persons, (b) damage to property, (c) damage to the Phase One Parcel or the Phase One Development or any part thereof, or (d) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by either Agency or Owner. This provision is intended to restrict each party (as permitted by law) to recover against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

H. Compliance with Policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Phase One Parcel, and Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

Exhibit I

FORM OF CERTIFICATE OF COMPLETION

Exhibit I

Form of Certificate of Completion

NOTE: The following form of Certificate of Completion has been prepared for the Phase One Development. With appropriate changes in parcel and phase designation, the same form of Certificate of Completion will be used for the Phase Two Development.

**Recording requested by
and when recorded mail to:**

Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

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

(Space above this line for Recorder's use.)

CERTIFICATE OF COMPLETION

This Certificate of Completion (the "**Certificate**") is made by the Redevelopment Agency of the City of Milpitas, a public agency (the "**Agency**") effective as of _____, 20__.

RECITALS

A. Agency and South Main Senior Lifestyle, LLC, a California limited liability company (the "**Developer**") entered into that certain Disposition and Development Agreement (the "**DDA**") dated as of August 18, 2009 concerning the redevelopment of certain real property located in the City of Milpitas, California, including that certain parcel more fully described in Exhibit A attached hereto (the "**Phase One Parcel**"). A Memorandum of the DDA was recorded in the Official Records of Santa Clara County as Instrument No. _____, Book _____, Page _____. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the DDA.

B. Pursuant to Section 5.12 of the DDA, the Agency is required to furnish the Developer or its successors with a Certificate of Completion upon completion of construction of the Phase One Development on and in the vicinity of the Phase One Parcel in accordance with the DDA and issuance by the City of Milpitas of a Certificate of Occupancy for the Phase One Development.

Exhibit A

Phase One Parcel

(Attach legal description.)

Exhibit J

ASSIGNMENT AND ASSUMPTION AGREEMENT

Exhibit JForm of Assignment and Assumption Agreement**ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT (this "Agreement"), is made and entered into as of August 18, 2009 (the "Effective Date"), by and between CALLAHAN PROPERTY COMPANY, INC., a California Sub-Chapter S Corporation ("Assignor"), and THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic ("Assignee").

RECITALS

A. Assignor, as Buyer, and Bay Stone Development, LLC, a California limited liability company, as Seller, have entered into that certain Purchase and Sale Agreement, dated April 15, 2009, as amended by that certain Amendment to Purchase and Sale Agreement, dated as of July 10, 2009, that certain Second Amendment to Purchase and Sale Agreement, dated as of July __, 2009, and _____ [add any other amendments] (the "Purchase Agreement"), regarding certain improved real property located in Milpitas, California, and more particularly described in Exhibit A to the Purchase Agreement (the "Property").

B. Assignor and Assignee desire to evidence the assignment of the interest of "Buyer" under the Purchase Agreement by Assignor to Assignee, and the assumption by Assignee of all of the obligations of Assignor under the Purchase Agreement, whether such obligations first arise or accrue before or after the date of this Agreement.

C. The assignment contemplated by this Agreement is expressly authorized without Seller's prior consent pursuant to Section 14.4.1(b) of the Purchase Agreement.

NOW, THEREFORE, in consideration of the Recitals, the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Assignor hereby assigns to Assignee, effective as of the Effective Date, all of the right, title and interest of the "Buyer" under the Purchase Agreement and (1) all of the right, title and interest of Assignor in and to (a) the Purchase Agreement, including, without limitation, Assignor's interest in the "Deposits" (as such term is defined in the Purchase Agreement), and (b) all "Due Diligence Rights" (which, as used herein, means any and all plans, specifications, reports, studies, warranties or other materials relating to the Purchase Agreement or the Property), and (2) any claim, right, demand or remedy that Assignor may now or hereafter have or be entitled to on account of the Purchase Agreement or the negotiations leading thereto.

2. Assumption. Assignee hereby assumes, effective as of the Effective Date, all of Assignor's obligations under the Purchase Agreement, whether such obligations first arise or accrue

before or after the date of this Agreement, and Assignee agrees that it shall be bound by the terms and provisions of the Purchase Agreement.

3. Counterparts. This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

4. Entire Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter of this Agreement as of the date hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the parties to this Agreement.

5. Attorney's Fees. If it becomes necessary for either party to file a suit to enforce this Agreement or any provisions contained in this Agreement, or to seek damages for a breach, the prevailing party shall be entitled to recover, in addition to all other remedies or damages, reasonable attorney's fees and costs incurred in such suit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Assignor:

CALLAHAN PROPERTY COMPANY, INC.,
a California Sub-Chapter S Corporation

By: _____
Joseph W. Callahan, Jr., Owner

Assignee:

REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS, a public body,
Corporate and politic

By: _____

Name: _____
Executive Director

Review of South Main Street
Senior Housing Project
Milpitas RDA Land Disposition and
Development Agreement

The Economics of Land Use



As Required by California Health and Safety Code Section 33433

Prepared for:

City of Milpitas Redevelopment Agency

Prepared by:

Economic & Planning Systems, Inc.

July 2009

EPS #19075

*Economic & Planning Systems, Inc.
2501 Ninth Street, Suite 200
Berkeley, CA 94710-2515
510 841 9190 tel
510 841 9208 fax*

*Berkeley
Sacramento
Denver*

www.epsys.com

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1. INTRODUCTION

The Redevelopment Agency of the City of Milpitas (RDA) as a part of its effort to achieve affordable housing within its Project Area proposes to acquire 5.94 acres of land located in the Midtown Specific Plan area from Bay Stone Developments LLC pursuant to a Purchase and Sale Agreement (PSA)¹ assigned to the RDA by the Callahan Property Company. The RDA will acquire the site using funds deposited in its Low and Moderate Income Housing Fund (Housing Funds). Subsequently the RDA will sell a 1.94-acre portion of the 5.94-acre site (Phase One Parcel) to South Main Senior Lifestyle, LLC (Developer) for the purchase price of approximately \$5.022 million upon satisfaction by the Developer of certain pre-construction conditions as set forth in a disposition and development agreement (DDA) to be entered into between the RDA and the Developer. The Developer will then, pursuant to the terms of the DDA,² construct a mixed-income, restricted congregated- and assisted-living, senior multifamily residential building containing 180 units on the Phase One Parcel, including 63 units (35 percent of the Phase One Parcel development and 16.2 percent of the total project) to be made available at affordable rents to a mix of very low income households (households with incomes not exceeding 50 percent of area median income [AMI]) and low income households (households with incomes not exceeding 80 percent of AMI). The DDA provides the Developer with \$7.7 million in funding assistance from the Housing Fund to assure long-term affordability of the affordable units in the Phase One Parcel development. The DDA also provides for the Developer, upon satisfaction of specified pre-construction conditions set forth in the DDA, to purchase an adjacent 2.86-acre portion of the site (Phase Two Parcel) at a future date at a then-appraised highest and best use fair market value for the purpose of developing market rate multifamily housing project.

California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) provides that a redevelopment agency may sell or lease real property. Section 33433(a) requires that a report be prepared, describing and specifying the proposed transaction agreements and terms, which include:

- (i) The cost to the agency of the agreement, including land acquisition.
- (ii) The estimated value of the land to be conveyed, determined at the highest and best uses permitted under the plan.
- (iii) The estimated value of the land to be conveyed, determined at the use and with the conditions, covenants, and development costs required by the sale. If the actual sale price is less than the value of the land with the foregoing conditions, an explanation is required of the difference.
- (iv) An explanation of why the sale of the property will assist in the elimination of blight.

¹ Purchase and Sale Agreement & Joint Escrow Instructions by Bay Stone Developments, LLC and Callahan Property Company, Inc., April 2009.

² Disposition and Development Agreement by and between the Redevelopment Agency of the City of Milpitas and South Main Senior Lifestyle, LLC, August 2009.

This document constitutes the report required pursuant to Section 33433 for the transaction set forth in the DDA, including the sale by the RDA to the Developer of the 1.94-acre Phase One Parcel and the subsequent development of the multifamily seniors rental development (with 63 affordable units), the sale by the RDA to the Developer of the 2.86-acre Phase Two Parcel for a market rate residential development, and the provision by the Developer of necessary public improvements on the balance of the site, as well as off-site public improvements, to serve these developments.

Section 2 of this report describes the proposed transaction and provides a financial analysis of the terms of the transactions estimates of the property's value. This chapter provides the basis for comparing the fair market values and the sale prices under the DDA of the Phase One Parcel and the Phase Two Parcel. **Section 2** also evaluates the justification for the proposed \$7.7 million grant of RDA Housing Funds to support the economically viable and feasible development on the Phase One Parcel, given the long-term requirements under the DDA that 35 percent of the units be occupied as affordable units for very low-income and low-income households. **Section 3** explains the determinations that the sales prices for the two parcels und the DDA represent the highest and best use fair market values. **Section 4** addresses the elimination of blight. Relevant documents referenced in this report are listed in **Appendix A**.

2. PROPOSED AGREEMENT FOR PROPERTY CONVEYANCE

Description of the Property

The site to be acquired by the RDA is located along South Main Street in central Milpitas. The site (containing Assessor's parcels 086-22-027, 086-22-028, 086-22-033, 086-22-034, 086-22-041, and 086-22-042) covers a total of 5.942 gross acres and formerly developed with a hotel, mobile home park, and an auto repair shop. The parcel is surrounded by a variety of urban uses including industrial buildings to the north, auto uses and residential neighborhood to the south, tracks of the Southern Pacific Railroad to the east, and a single-family residential neighborhood to the west, on the other side of South Main Street. As a transitional area characterized by older commercial and industrial development, vacant and underutilized parcels, and various development constraints including the existence of hazardous materials left over from historical industrial uses, the area was included in the City's RDA Project Area. The site is also included within the area covered by the Midtown Specific Plan which designates and has zoned the area located along South Main Street for "medium to high density housing." The City has also approved a development application for the site, thus making it fully entitled for 387 units of multifamily housing.

Summary of the Agreement

The Agency proposes to enter into a DDA with the Developer. The DDA stipulates the assignment of a PSA between the Callahan Property Company and Bay Stone Developments LLC, the seller of the parcel, to the RDA. The PSA sets the purchase of the parcel at \$12.4 million, and required the seller to complete demolition and remediation of the site before conveyance of the property, using a portion of the purchase price for this purpose.

Following its purchase of the site, the RDA will resell the 1.94-net-acre Phase One Parcel to the Developer for \$5,022,125 for the purpose of developing a senior housing project with a substantial number of units reserved for low- and moderate-income families. The DDA provides the Callahan Property Company with \$7.7 million in funding assistance from RDA Housing Funds to assure long-term affordability of the 63 affordable housing units and also provides for the Developer to purchase the remaining 2.86-net-acre Phase Two Parcel³ at its future appraised value for the purpose of developing market rate housing, but in no event less than the price of \$7,377,871.

Costs of Agreement to the RDA

The acquisition of the property by the RDA will cost \$12.4 million as reflected in the Purchase and Sale Agreement between Stone Developments LLC and the Callahan Property Company, which will be assigned to the RDA. The Agency will not be responsible for any other costs

³ Phase One and Phase Two Parcels total approximately 4.57 net acres. The remaining 1.36 acres will contain the right-of-way for various public street, utility, and related infrastructure improvements.

associated with the site demolition, hazardous materials remediation, site preparation, or development of the parcel or any related off-site costs. The seller, using a portion of the purchase price, will be responsible for all demolition and remediation costs, and the Developer will be responsible for all development costs on the private parcels (the Phase One Parcel and the Phase Two Parcel), as well as for all necessary on- and off-site public improvements to support such developments.

After the Developer exercises its right to purchase the 1.94-net-acre Phase One Parcel for \$5.022 million, the net cost to the RDA will be \$12.4 million less \$5.022 million, or \$7.378 million. After the Developer purchases the Phase Two Parcel at its appraised value in the future (but in no event less than \$7.378 million), the net cost to the RDA of its initial acquisition of the site will be further reduced to at least zero (i.e., such costs will be entirely offset), and if the highest and best use fair market value of the Phase Two Parcel determined in accordance with the DDA is greater than the guaranteed "floor" purchase price, then the RDA will actually receive total sale proceeds under the DDA in excess of its initial cost of acquisition of the site.

The DDA provides an RDA grant in the amount of \$7.7 million for the development of the 1.94-net-acre portion of site as a senior housing project.⁴ As described in subsequent section of this report, this grant is necessary for the financial feasibility of the senior housing project, which will provide that 35 percent of the units will be affordable—20 percent to very-low-income households (50 percent of AMI) and 15 percent to low-income households (80 percent of AMI).⁵ Based on the Affordable Housing Regulatory Agreement, the units shall remain affordable for 55 years.⁶

Estimated Fair Market Value of the Phase One Parcel

The Purchase and Sale Agreement sets forth a recently established arms-length purchase price negotiated between a seller and a buyer who are willing, but not under urgent necessity, to complete the transaction, each with full knowledge of the uses and purposes for which the site is reasonably adaptable and available. As such, the \$12.4 million purchase price under the PSA represents the fair market value of the property at its highest and best use value. The most recent appraisal of the site is consistent with the actual arms length negotiated price in the PSA. A November 2008 appraisal of the site determined a fair market value of \$14.8 million.⁷ This appraisal was completed five months before the PSA price was negotiated. The higher valuation

⁴ Disposition and Development Agreement by and between the Redevelopment Agency of the City of Milpitas and South Main Senior Lifestyle, LLC, (Article IX), August 2009.

⁵ Disposition and Development Agreement by and between the Redevelopment Agency of the City of Milpitas and South Main Senior Lifestyle, LLC, (Section 6.2), August 2009.

⁶ Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants by and between Redevelopment Agency of the City of Milpitas and South Main Senior Lifestyle, LLC.

⁷ Appraisal of 1504-1618 South Main Street, Milpitas, California, The Schmidt-Prescott Group, Inc., prepared for Community Banks of Northern California, November 2008.

in the November 2008 appraisal is consistent with the negotiated purchase price under the PSA, in that values continued to decline at a precipitous rate during this period of the national recession and continued real estate market distress. For example, median home prices in Santa Clara County decreased 28 percent from May 2008 to May 2009.⁸ As another indicator of this distress, the appraisal conducted in May 2008 concluded a price of \$23.2 million.

In turn, the Phase One Parcel's full allocable share of the entire highest and best use fair market value of the site equals \$5,022,129, or 40.5 percent of the full purchase price (\$12.4 million) for the entire site. The 40.5 percent allocation factor of the overall site value is based on the following. The Phase One Parcel (1.94-net acres) plus the Phase Two Parcel (2.86-acres) comprise a grand total of 4.80 privately developable acres. (The balance of the 5.94 gross acre site being acquired by the RDA will remain in public ownership for the provision of public streets and improvements.) The Phase One Parcel's portion of this 4.80-acre privately developable acreage is approximately 40.5 percent. This methodology assures that the Phase One Parcel's allocable share of the highest and best use fair market value of the site takes into account not only the purely private parcels share of the fair market value, but also includes the private parcel's allocable share of the value of the portions of the site which will remain in public ownership and on which will be located public street and other improvements supporting the development. Consequently, a price of \$5,022,129 represents the highest and best use fair market value of the Phase One Parcel.

Estimated Funding Gap for the Phase One Development

The DDA, which provides for the conveyance of the Phase One Parcel to the Developer, requires that a senior housing project with 35 percent of the units affordable to be built on the 1.94-acre Phase One Parcel. This requirement creates a substantial cost which significantly reduces the value of the land compared to what it would be if it were developed for market-rate residential per the Appraisal, or, stated differently, creates a funding gap between the costs of developing the Phase One Parcel under the terms of the DDA and the amount of private debt and equity financing that can be reasonably obtained to pay for development costs while still earning a fair return on such private investment.

Table 1 shows a pro forma financial analysis summary for a senior housing project which indicates that, without an RDA grant, a senior housing project with a 35 percent affordability requirement would not produce financially feasible returns, even if the land cost were zero. Note that the capitalized value of the project, at approximately \$47 million, is below estimated project costs by some \$3.3 million. The analysis also shows that the \$7.7 million RDA grant is necessary to produce an "internal rate of return" on invested capital of 11 percent, which is considered in the industry as the minimal necessary in order to attract the necessary equity and lending. The grant also allows the project to pay the full fair market value of \$5.022 million for the Phase One Parcel.

⁸ Dataquick, June 2009

Table 1: Pro Forma Analysis

Item	Amount
Costs	
Land Cost	\$5,022,000
Site Improvements	\$1,500,000
Construction Costs	\$29,269,000
Indirect Costs	\$8,311,000
Financing Costs [1]	<u>\$10,818,000</u>
Subtotal	\$54,920,000
Net Lease-up (Revenue)	(\$4,398,000)
Total Costs	\$50,522,000
Revenue	
Net Operating Income	\$3,772,100
Capitalized Value at 8%	\$47,151,000
<i>Revenue minus Costs</i>	<i>(\$3,371,000)</i>
Plus RDA Grant	\$7,700,000
Total	\$4,329,000
Internal Rate of Return (IRR) [2]	11%

[1] Includes interest during lease-up.

[2] Assumes 10-year operating period.

Source: Callahan Property Company; Economic & Planning Systems, Inc.

Under the terms of the DDA, the Phase Two Parcel may be purchased by the Callahan Property Company at fair market value as determined by a future appraisal at the time of the transaction provided, however, that the acquisition price shall not be less than the balance of the City acquisition cost of \$7.378 million. Assuming the future value is comparable to the value indicated by the Appraisal, the 2.86-net-acre Phase Two Parcel would be sold for \$8.5 million. The actual price of the land will depend upon market conditions at that future point in time, as well as the specific size and type of project that could be constructed on the Phase Two Parcel.

3. COMPARISON OF FAIR MARKET VALUES AND DDA PURCHASE PRICES

Phase One Parcel

As described in **Section 2**, the highest and best use fair market value of the Phase One Parcel is \$5,022,000. As described in **Sections 1 and 2**, that value is equal to the Phase One Parcel purchase price under the DDA. Consequently, it may be concluded that the Phase One Parcel will be conveyed under the DDA at a purchase price that is not less than its highest and best use fair market value. In addition, as documented in **Section 2**, to make the Phase One Parcel development financially feasible given the high level of long-term affordable housing included in the development requires an RDA grants from its Housing Funds of not less than \$7.7 million.

Phase Two Parcel

The Phase Two Parcel may not be developed for several years under the terms of the DDA. As a result and as described above, the DDA provides for a new objective valuation through a professional appraisal process of the highest and best use fair market value of the Phase Two Parcel at the time it is conveyed by the RDA to the Developer (with a minimum purchase price of \$7,371,871). This process under the DDA assures that the purchase price for the Phase Two Parcel under the DDA will equal its future highest and best use fair market value

The acquisition of the overall site, including the Phase Two Parcel, and its subsequent sale by the RDA are necessary to achieve the RDA objectives for the Phase One Parcel, and development of the Phase Two Parcel will also help to eliminate blight and generate revenues that the RDA can use for public improvements and other RDA projects.

4. *ELIMINATION OF BLIGHT*

Physical Improvements

As described above, the Agency's financial participation is necessary for redevelopment of the property. The redevelopment of the property will result in the remediation of blight including antiquated, non-conforming development and remediation of hazardous materials located on the site. There currently a no other available means of financing construction of the Phase One Parcel senior housing project without RDA participation.

Other Public Benefits

Other public benefits of the transaction that help achieve the RDA's objectives include the property tax increment that will be generated which can be utilized to further the objectives of the redevelopment plan. The site currently generates little or no incremental property tax to the RDA. The new development on the Phase One Parcel alone will add approximately \$50 million of new assessed value, resulting in approximately \$400,000 in property tax increment to the RDA. The entire project (Phase One and Phase Two Parcels), including the affordable housing units and the market rate units is likely to have an assessed value of \$120 million, creating property tax increment revenue to the RDA in the range of \$900,000 annually. This additional tax increment funding will help realize the vision set forth in the Midtown Specific Plan. Moreover, the approximately 700 to 800 residents of the new housing will create demand for goods and services provided by local businesses and thus supporting local economic development and generating retail sales tax revenue to the City.

APPENDIX A: REFERENCES

California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*).

Appraisal of 1504-1618 South Main Street, Milpitas, California, The Schmidt-Prescott Group, Inc., prepared for Community Banks of Northern California, November, 2008.

Disposition and Development Agreement by and between the Redevelopment Agency of the City of Milpitas and South Main Senior Lifestyle, LLC, August, 2009.

Purchase and Sale Agreement & Joint Escrow Instructions by Bay Stone Developments, LLC and Callahan Property Company, Inc., April, 2009.

Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants by and between Redevelopment Agency of the City of Milpitas and South Main Senior Lifestyle, LLC.



Project Description
MILPITAS SENIOR HOUSING
1504-1620
South Main Street
Milpitas, California

Owner / Applicant:

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SUBMITTALS / REVISIONS

MARK	DESCRIPTION	DATE
	2 June 2009	
	4 June 2009	
	30 June 2009	

KEY PLAN: NTS

DEVELOPMENT & DISPOSITION AGREEMENT EXHIBIT C-1

SITE & FIRST FLOOR PLAN

SHEET DESCRIPTION

SCALE: AS NOTED	KJF-B DRWN:
DATE: 2/20/09	JRB APPRV'D:
CDA FILE PATH:	290033 CDA PROJECT NO.

0 10' 20' 30' 40' 50' 60' 70' 80' 90' 100'

1" = 30'-0"
1:360

20

