HA3-B

FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

THE CITY OF MILPITAS HOUSING AUTHORITY

and

SOUTH MAIN SENIOR LIFESTYLES, LLC

Initially Executed: August 18, 2009

Amended: October 18, 2011

First Amended and Restated: November 19, 2013

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THIS FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**"), initially executed as of August 18, 2009, as amended October 18, 2011, and as herein fully amended and restated as of November 19, 2013 ("**Amendment Effective Date**"), is entered into by and between the City of Milpitas Housing Authority ("**Housing Authority**"), a public body, corporate and politic, and South Main Senior Lifestyles, LLC, a California limited liability company ("**Developer**"). Housing Authority is authorized by the City Council ("**City Council**") of the City of Milpitas ("**City**") to conduct business pursuant to the California Housing Authorities Law (Health and Safety Code Section 34200 et seq.) ("**Housing Authorities Law**"), and to serve as "housing successor" to the former Redevelopment Agency of the City of Milpitas ("**Agency**") pursuant to Health and Safety Code 34176(b). Housing Authority 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**") and prior to its dissolution as described below, the Agency had the responsibility to implement the redevelopment plan adopted in 1976 (as subsequently amended, "**Redevelopment Plan**") by the City Council of the City for the Milpitas Redevelopment Project Area No. 1 (**"Project Area**") as more particularly described in the Redevelopment Plan.

B. The Agency sought, and the Housing Authority now continues to seek, 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, 086-22-046, 086-22-047, and 086-22-048 located at 1504-1620 South Main Street and more particularly described in Exhibit A attached hereto ("**Property**"). The Property is located within the Project Area and the area governed by the City's Midtown Specific Plan ("**Specific Plan**"). The Agency purchased the Property on November 23, 2009 using funds from its Low and Moderate Income Housing Fund ("**Housing Fund**") in accordance with the requirements of the CRL. As further provided in Recital K and in accordance with Section 1.3.5.2 hereof, the Property is intended to be subdivided prior to conveyance, resulting in the assignment of new Assessor's Parcel numbers.

C. To accomplish development of the Property consistent with the CRL, the Redevelopment Plan and the Specific Plan, the Agency and the Developer entered into a Disposition and Development Agreement dated as of August 18, 2009, as amended by a First Amendment dated October 18, 2011 (collectively, "**Initial Agreement**"). The Initial Agreement provided for disposition of the Property to the Developer and development thereon by the Developer of a two-phased residential complex 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 ("**Initial Project")**.

D. Pursuant to ABx1 26 enacted effective June 28, 2011, as clarified and amended by AB 1484 effective June 27, 2012 (collectively, "**Redevelopment Dissolution Law**"):

1. The Agency, together with every redevelopment agency in California, was dissolved as of February 1, 2012; and

2. Housing Authority, City Council, and Agency adopted joint resolution HA3/8151/RA426 on January 4, 2012, whereby (a) the City, acting in a separate legal capacity and as a separate legal entity, elected to be the successor agency ("**Successor Agency**") to the dissolved RDA for purposes of paying the obligations, unwinding the affairs, and liquidating specified assets of the dissolved Agency; and (b) the City selected the Housing Authority and the Housing Authority elected to take on the responsibility of performing the housing functions of the dissolved Agency.

E. The Property constitutes a "housing asset" of the Agency that transferred to the Housing Authority pursuant to the provisions of Health and Safety Code Section 34176, as confirmed by:

1. A letter of August 31, 2012 from the California Department of Finance to the Housing Authority;

2. The Housing Fund Due Diligence Review report submitted by the County of Santa Clara Finance Agency dated October 2, 2012 as prepared in accordance with Health and Safety Code Section 34179.5; and

3. The Agreed Upon Procedures report submitted by the County of Santa Clara Finance Agency dated October 10, 2012 as prepared in accordance with Health and Safety Code Section 34182(a).

F. Within the meaning of Health and Safety Code Section 34176, the Initial Agreement constitutes:

1. A "housing obligation" and a "housing duty" of the dissolved Agency in that it commits Agency to convey the Property (which is a housing asset of the dissolved Agency, as described in Recital E) to Developer and to provide specified financial assistance from its Housing Fund to Developer;

2. A "housing asset" of the dissolved Agency, in that the Initial Agreement includes an express obligation of Developer to develop and operate specified affordable housing units in the Initial Project for the benefit of the dissolved Agency's affordable housing program; and

3. A "housing function" of the dissolved Agency, in that the Initial Agreement directs the Agency to perform various functions and actions with respect to the above described housing obligations, duties, and assets in order to facilitate development of the Initial Project on the Property and provision of specified affordable housing units using moneys from the Housing Fund.

G. For the foregoing reasons, and in accordance with the requirements of Health and Safety Code Section 34177(g) calling for Successor Agency to transfer the housing functions and assets of the dissolved Agency to Housing Authority, Successor Agency and Housing Authority entered into an Assignment and Assumption Agreement dated of even date herewith, whereby Successor Agency assigned and delegated its rights and obligations under the Initial Agreement to Housing Authority.

H. The Parties now desire to modify the terms of the Initial Agreement in the form of this Agreement to better reflect current market, financial, statutory and planning circumstances, and to enable feasible development of the Property in furtherance of the CRL, the Redevelopment Plan, the Specific Plan, the Agency's most recent five-year Implementation Plan ("**Implementation Plan**"), and the Housing Authorities Law. As part of such modification, the Parties desire to make certain modifications to the Initial Project in the form of the proposed project ("**Project**") that is further summarized below and detailed throughout this Agreement.

I. The proposed Project that is the subject of this Agreement is generally described in the Scope of Development ("**Scope of Development**") attached hereto as Exhibit B. As further described and depicted in the Scope of Development, the Project will include the following two sequential phases:

1. The first phase residential development ("**Phase One Development**") consisting of a one hundred ninety-nine (199) unit "continuum of care" senior (62 years of age and older) housing rental development and related amenities, parking, landscaping, and public street, utility and infrastructure improvements. The Phase One Development will include ten (10) residential units available at affordable housing cost to income-qualified very low income households ("**Phase One Affordable Units**", as more fully described in the Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Phase One Regulatory Agreement**"), the form of which is attached hereto as Exhibit H-1).

2. The second phase residential development ("**Phase Two Development**") consisting of one hundred ninety (190) apartment units for active, independent seniors (62 years of age and older), and related amenities, parking, landscaping and public street, utility, and infrastructure improvements. The Phase Two Development will include thirty-eight (38) residential units available at affordable housing cost to income-qualified very low income households ("**Phase Two Affordable Units**", as more fully described in the Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Phase Two Regulatory Agreement**"), the form of which is attached hereto as Exhibit H-2). The Phase One Affordable Units and the Phase Two Affordable Units are collectively referred to herein as "**Affordable Units**".

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

J. The Property received certain land use entitlements pursuant to a City Council resolution of February 5, 2008. Those entitlements, including a vesting tentative map remain applicable to the Property through June 24, 2014 (the "**Current VTM**"). To facilitate the development of the Project, the Developer will seek a new set or amended set of land use entitlements from the City (the "**Entitlements**") in accordance with Section 1.3.5.1. The nature and scope of the anticipated 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 a new application of the Developer and approval of the City Council, is referred to herein as the "**Revised VTM**."

K. To further facilitate the development of the Project, the Developer, with the cooperation of the Housing Authority as provided in Section 1.3.5.2, will seek to cause the

subdivision of the Property in accordance with the State Subdivision Map Act and City Subdivision Ordinance ("**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 B, Attachment 1 (as such parcel boundaries are finally established pursuant to the approved Revised VTM and the Final Map, "**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 B, Attachment 1 (as such parcel boundaries are finally established pursuant to the approved Revised VTM and the Final Map, **"Phase Two Parcel**"), upon which the Phase Two Development will be constructed and operated; and

3. Public use parcels to be dedicated in fee or by easement to the City comprising the approximately 1.14-net acre balance of the Property, generally as delineated in the attached Exhibit B, Attachment 1, (as such parcel boundaries are finally established pursuant to the approved Revised VTM and the Final Map, "**Public Use Parcels**"), which will contain the right-of-way for various public streets (i.e., Cedar Way and Costas Street), utilities, 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. Exhibit A includes an illustrative plat map that will be subject to refinement in preparing the Final Map.

L. On March 19, 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, it has been determined that this Agreement is 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 with respect to this Agreement pursuant to the California Environmental Quality Act ("**CEQA**"), as provided in Section 15168(c)(2) of the State CEQA Guidelines, and this Agreement is also exempt from CEQA pursuant to California Government Code Section 65457. The parties acknowledge and agree that, in connection with consideration of Developer's application for the Entitlements and other approvals pursuant to Section 1.3.5, Developer will provide substantially greater detail with respect to the site specific activities and physical characteristics of the proposed Project; that evaluation of the site specific activities and physical conditions of the proposed Project will be conducted by the City pursuant to CEQA as provided in State CEQA Guidelines Section 15168(c)(4) or 15168(d)(1); and that mitigation measures required as part of the EIR that are applicable to the Project and any other mitigation measures deemed necessary as a result of such further City review (collectively, "**Project Mitigation Measures**") have been incorporated in this Agreement as requirements for development of the Project pursuant to Section 5.3, and will be incorporated by the City into the Entitlements or other Project approvals.

M. By action of October 23, 2013, the Planning Commission of the City determined, in accordance with Government Code Section 65402(c), that the disposition of the Property by

Housing Authority and the development of the Project by Developer pursuant to this Agreement conforms to the Specific Plan and the City's General Plan.

N. As housing successor of the dissolved Agency, the Housing Authority has inherited all of the rights, powers, assets, duties and obligations of the Agency in connection with the disposition of the Property pursuant to this Agreement, including the power and duty to dispose of the Property consistent with the disposition requirements of the CRL that formerly applied to the Agency. In compliance with these powers and duties, City Council and Housing Authority 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.

O. The purpose of this Agreement is to effectuate the Redevelopment Plan, the Specific Plan, the Implementation Plan, the CRL and the Housing Authorities Law by providing for the disposition and development of the Property as more particularly set forth herein, including the provision of the Affordable Units. The Housing Authority 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, the Specific Plan, the Implementation Plan, the CRL and the Housing Authorities Law.

P. It is the Parties' intention that, as of the Amendment Effective Date, this Agreement shall amend, restate, and supersede the Initial Agreement in its entirety.

NOW THEREFORE, the Parties hereby agree as follows.

ARTICLE 1.

REPRESENTATIONS; CONDITIONS PRECEDENT TO PROPERTY CONVEYANCE

Section 1.1 Developer's Representations. Developer represents and warrants to Housing Authority 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 Housing Authority. Developer acknowledges that Housing Authority shall rely upon Developer's representations made herein, notwithstanding any investigation made by or on behalf of Housing Authority.

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 James R. Burns II ("**Burns**"), Harry G. Burrowes ("**Burrowes**"), Joseph W. Callahan, Jr. ("**Callahan**"), Deborah L. Clausen ("**Clausen**"), and Therese A. Freeman ("**Freeman**"), each an individual. Callahan and Burns are the co-managing members of Developer. Burns, Burrowes, Callahan, Clausen, and Freeman 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.

Section 1.2 Housing Authority Representations. Housing Authority represents and warrants to Developer as follows, and Housing Authority 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, Housing Authority shall immediately give written notice of such fact or condition to Developer. Housing Authority acknowledges that Developer shall rely upon Housing Authority's representations made herein, notwithstanding any investigation made by or on behalf of Developer.

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

1.2.2 No Conflict. Housing Authority'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 Housing Authority 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 Housing Authority to perform its obligations under this Agreement.

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

Section 1.3 Conditions Precedent. As a condition precedent to Housing Authority's obligation to convey the Property to Developer, Developer must satisfy each of the requirements

set forth below to the Housing Authority's satisfaction and within the times set forth in the Schedule of Performance attached hereto as Exhibit D ("**Schedule of Performance**"), unless such time is extended by the mutual agreement of Developer and Housing Authority acting in the discretion of its Executive Director (or waived by Housing Authority acting in the discretion of its Executive Director):

(a) Housing Authority's Board approval of a Financing Plan for the Phase One Development in accordance with Section 1.3.1; and

(b) Submittal by Developer of the evidence of availability of funds for the Phase One Development in accordance with Section 1.3.3; and

(c) City approval of the Entitlements for the Project in accordance with Section 1.3.5.1 and issuance of any other City approvals necessary for construction of the Phase One Development in accordance with Section 1.3.5; and

(d) In cooperation with Housing Authority, recordation of the Revised VTM and the Final Map with respect to the entire Property in accordance with Section 1.3.5.2, provided Developer shall only be required to bond for the public improvements to be constructed as part of Phase 1 prior to the recordation of the Final Map for the entire Property; and

(e) Payment by Developer of all City fees and charges required to be paid at or prior to Closing in accordance with Section 1.3.5.3; and

(f) City approval of the Construction Plans for the Phase One Development in accordance with Section 1.3.5.4; and

(g) Housing Authority approval of the Operator and the Operations Agreement for the Phase One Development in accordance with Section 1.4.1; and

(h) Housing Authority approval of the Services Plan for the Phase One Development in accordance with Section 1.4.2; and

(i) Developer execution and delivery of the Housing Authority Documents in accordance with Section 1.5; and

(j) Submittal by Developer of evidence of required insurance for the Phase One Development in accordance with Section 1.6; and

(k) Payment into escrow by Developer of the Purchase Price in accordance with Section 3.2 and of specified Closing costs in accordance with Section 3.4; and

(l) Satisfaction or waiver of the Closing conditions in accordance with Section 3.7.

As a condition precedent to Developer's commencement of construction of the Phase Two Development on the Phase Two Parcel, Developer must satisfy each of the requirements set forth below to the Housing Authority's satisfaction with respect to the Phase Two Parcel and the Phase Two Development (collectively, "**Phase Two Development Commencement**

Requirements") within the times set forth in the Schedule of Performance (Exhibit D) unless such time is extended by the mutual agreement of Developer and Housing Authority acting in the discretion of its Executive Director (or waived by Housing Authority acting in the discretion of its Executive Director):

(a) Housing Authority's Board approval of a Financing Plan for the Phase Two Development in accordance with Section 1.3.1; and

(b) Submittal by Developer of the evidence of availability of funds for the Phase Two Development in accordance with Section 1.3.3; and

(c) City issuance of any City approvals necessary for construction of the Phase Two Development in accordance with Section 1.3.5; and

(d) Payment by Developer of all City fees and charges required to be paid prior to commencement of construction of the Phase Two Development in accordance with Section 1.3.5.3; and

(e) City approval of the Construction Plans for the Phase Two Development in accordance with Section 1.3.5.4; and

(f) Submittal by Developer of evidence of required insurance for the Phase Two Development in accordance with Section 1.6;

Developer and Housing Authority, 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 10.20) 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 Housing Authority's Board review and approval Developer's plans for financing the acquisition of each Development Parcel and the construction and permanent financing of each Development Phase ("**Financing Plan**"). A separate Financing Plan shall be submitted for each Development Phase. 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 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 construction and operation of the applicable Development Parcel/Development Phase, including the substantial reserves required by lenders and contingencies to cover unanticipated cost overruns. The pro formas will also include a flow of funds showing sources and timing of disbursements to cover projected construction and operating costs. Developer anticipates that a substantial portion of the investor equity will be invested upfront, prior to the funding of the construction loan, to pay predevelopment costs, and to fund the lender-mandated reserves and project cost contingencies.

As of the Amendment Effective Date, it is the Parties' expectation, and the Parties acknowledge and agree, that the first mortgage debt financing for the Phase One Development and the Phase Two Development may consist of a Federal Housing Administration ("**FHA**") Section 232 program and Section 221(d)(4) program insured loan, respectively, although Developer may also explore and include other forms of debt financing in the Financing Plan it submits for each Development Phase. In the event Developer's proposed Financing Plan for the Phase Two Development as approved by Housing Authority provides for issuance of tax-exempt bonds ("**Phase Two Tax-Exempt Bonds**") to provide debt financing for the Phase Two Development and to enable procurement of accompanying low income housing tax credit equity, Housing Authority agrees to serve as issuer of the Phase Two Tax-Exempt Bonds and to use diligent good faith efforts to cause issuance of such bonds and delivery of the net bond proceeds for development of the Phase Two Development, consistent with all applicable laws, statutes, rules and regulations; provided that in no way whatsoever shall Housing Authority be responsible, obligated, or liable for the payment of any such bonds other than and exclusively from funds provided by Developer or from designated bond proceeds.

Housing Authority staff shall promptly review and submit each proposed Financing Plan to Housing Authority Board for Board's consideration of approval, and Housing Authority shall approve such plan in writing within thirty (30) business days following receipt provided that the plan conforms to the requirements of this Section 1.3.1. If Housing Authority does not approve a Financing Plan, Housing Authority 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 Housing Authority 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. Developer acknowledges and agrees that (i) Housing Authority's approval of a Financing Plan for the Phase One Development shall be a condition precedent to Housing Authority's obligation to convey the Property to Developer; and (ii) the Financing Plans for Phase One and Phase Two are subject to the Housing Authority's review and approval. Housing Authority's approval of a Financing Plan for the Phase Two Development shall be a condition precedent to commencement of construction of the Phase Two Development by Developer. 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.

1.3.2 Amendment of Previously Approved Financing Plan. Developer shall submit any material revision to an approved Financing Plan to the Housing Authority for its review and approval. Housing Authority staff shall promptly review each proposed revised Financing Plan, and acting through Housing Authority's Executive Director, Housing Authority shall approve a revised Financing Plan in writing within thirty (30) business days following receipt provided that the revised Financing Plan conforms to the requirements of this Section. If Housing Authority does not approve a revised Financing Plan, Housing Authority 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 Housing Authority 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

Housing Authority, the previously approved Financing Plan shall govern the financing of that Development Phase.

1.3.3 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 Housing Authority evidence reasonably satisfactory to Housing Authority that:

(a) 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, with respect to the Phase One Development, will be met upon conveyance of the Property to Developer, and, with respect to the Phase Two Development, will be met upon commencement of construction by Developer), and that such initial draw of funds will be available upon conveyance of the Property to Developer with respect to the Phase One Development, and will be available upon commencement of construction by Developer with respect to the Phase Two Development;

(b) all approvals, permits, and authorizations which are conditioned upon conveyance of the Property with respect to the Phase One Development, and commencement of construction with respect to the Phase Two Development, will be received promptly after conveyance or commencement of construction, as applicable; and

(c) all construction financing (including draws subsequent to the initial draw of funds) with respect to the applicable Development Phase will be available at the times and subject to the terms and conditions of the financing sources set forth in the applicable approved Financing Plan.

Submission by Developer, and approval by Housing Authority, of such evidence of funds availability and evidence of issuance of all required approvals, permits and authorizations for the Phase One Development shall be a condition precedent to Housing Authority's obligation to convey the Property in its entirety to Developer. Submission by Developer, and approval by Housing Authority, of such evidence of funds availability and evidence of issuance of all required approvals, permits and authorizations for the Phase Two Development shall be a condition precedent to commencement of construction of the Phase Two Development by Developer.

1.3.4 Scope of Development. Prior to the Housing Authority's consideration of this Agreement, Developer submitted to Housing Authority a proposed Scope of Development for the Project in the form attached as Exhibit B. The Scope of Development describes and 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. By execution of this Agreement, Housing Authority hereby approves the general concept of the Scope of Development, subject to subsequent City review and approval through the regular Entitlements process. The parties acknowledge and agree that the Scope of Development represents a starting point and framework for Developer's application for the Entitlements pursuant to Section 1.3.5.1, but that any actual Entitlements granted by the City shall incorporate refinements and revisions to the Scope of Development as determined pursuant to the City's application review process for the Entitlements.

1.3.5 Land Use Approvals; Cooperation. Developer acknowledges and agrees that the execution of this Agreement by Housing Authority 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 the Property to Developer, Developer shall obtain all permits, licenses and approvals required for development of the Phase One Development, including without limitation, building permits. Prior to commencement of construction of the Phase Two Development by Developer, Developer shall obtain all permits, licenses and approvals required for development of the Phase Two Development, including without limitation, building permits. Housing Authority 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 Entitlements as described in Section 1.3.5.1 below or the subdivision of the Property as described in Section 1.3.5.2 below, are hereinafter referred to as the "**Conditions of Approval**."

Developer further acknowledge and agrees that, in connection with consideration of Developer's application for the Entitlements and other approvals pursuant to Section 1.3.5, Developer will provide substantially greater detail with respect to the site specific activities and physical characteristics of the proposed Project; that evaluation of the site specific activities and physical conditions of the proposed Project will be conducted by the City pursuant to CEQA as provided in State CEQA Guidelines Section 15168(c)(4) or 15168(d)(1); and that mitigation measures required as part of the EIR that are applicable to the Project, and any other mitigation measures deemed necessary as a result of such review, will be incorporated into the Entitlements or other Project approvals.

1.3.5.1 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 Entitlements, including, without limitation, a planned district zoning for the Property, a site development permit, a density bonus, a use permit, the Revised VTM, the Final Map, and any other entitlements deemed necessary by the City. The application for the Entitlements sought by Developer shall be reasonably consistent with the Scope of Development (Exhibit B); provided, however, that the parties acknowledge and agree that any actual Entitlements granted by the City shall incorporate refinements and revisions to the Scope of Development as determined pursuant to the City's application review process for the Entitlements. In addition, at Developer's election, the application for the Entitlements may include (and if granted by the City the term "Entitlements" shall be deemed to also include) a development agreement for the Project in accordance with California Government Code Section 65864 et seq. The parties further acknowledge and agree that, in addition to the contractual requirements set forth in the Phase One Regulatory Agreement and the Phase Two Regulatory Agreement that each Development Phase be operated as senior housing with the Affordable Units, the Entitlements granted by City for the Project will include a land use restriction that each Development Phase be operated as senior housing consistent with applicable federal and state laws and regulations with the Affordable Units. City approval of the Entitlements shall be a condition precedent to the Housing Authority's obligation to convey the Property to Developer.

1.3.5.2 Subdivision of Property. Provided that the City has approved the Entitlements, including, without limitation, the Revised VTM and the Final Map, and provided that all other conditions precedent to conveyance of the Property in its entirety to Developer related to the Phase One Parcel and the Phase One Development have been satisfied or waived, Housing Authority shall record, prior to conveyance of the Property in its entirety to Developer and at the Developer's expense, the Revised VTM and the Final Map for the entire Property. Upon filing and recording of the Final Map, the legal descriptions of the Phase One Parcel, the Phase Two Parcel, and the Public Use Parcels shall be attached to this Agreement as Exhibit A-1, Exhibit A-2, and Exhibit A-3, respectively.

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

1.3.5.4 Construction Plans. Prior to conveyance of the Property to Developer, City shall have approved the Construction Plans for the Phase One Development pursuant to Article 5. Prior to commencement of construction of the Phase Two Development by Developer, City shall have approved the Construction Plans for the Phase Two Development pursuant to Article 5.

1.3.5.5 Public Improvement Costs. The Scope of Development (Exhibit B) provides, and it is anticipated that the Entitlements will provide, for the preponderance of on-site and off-site public improvements needed for the development of both the Phase One Parcel and the Phase Two Parcel to be installed and initially paid for by Developer as part of the development of the Phase One Development. Housing Authority acknowledges and agrees that Developer with respect to the Phase One Development may seek reimbursement from Developer with respect to the Phase Two Developer (if different) for an allocable fair share of the on-site and off-site public improvements installed and initially paid for by Developer as part of the Phase One Development; provided that Housing Authority shall have no obligation with respect to any such reimbursement.

Section 1.4 Operator, Operations Agreement, and Services Plan For Phase One Development.

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

Housing Authority staff shall promptly review the identity and qualifications of the Operator and the terms of the Operations Agreement, and acting through Housing Authority's Executive Director, Housing Authority shall approve such Operator and Operations Agreement in writing within thirty (30) business days following receipt provided that the following requirements are satisfied. Housing Authority shall approve the proposed Operator if, in

Housing Authority Executive Director's 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 Housing Authority Documents. Housing Authority shall approve the proposed Operations Agreement if, in Housing Authority Executive Director's 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 Housing Authority 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 1.4.2) and providing the Affordable Units pursuant to and in accordance with the Phase One Regulatory Agreement.

If Housing Authority does not approve the Operator and/or the Operations Agreement, Housing Authority 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 proposed a different Operator and/or a shall submit a revised Operations Agreement, as applicable, that addresses the reasons for disapproval, and Housing Authority 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. Housing Authority's approval of the Operator and the Operations Agreement shall be a condition precedent to Housing Authority's obligation to convey the Property to Developer.

Developer shall submit the identity and qualifications of any proposed new Operator, and/or any material revision to the approved Operations Agreement to Housing Authority for its review and approval. Housing Authority staff shall promptly review the proposed new Operator and/or revised Operations Agreement, and acting through Housing Authority's Executive Director, Housing Authority shall approve the new Operator and/or the revised Operations Agreement in writing within thirty (30) business days following receipt provided that the new Operator and/or the revised Operations Agreement conforms to the requirements of this Section. If Housing Authority does not approve the new Operator and/or the revised Operations Agreement, Housing Authority 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 Operations Agreement that addresses the reasons for disapproval. Any new Operator that is approved by Housing Authority shall thereafter be the Operator with respect to the Phase One Development. Any revised Operations Agreement that is approved by Housing Authority shall thereafter constitute the approved Operations Agreement for the Phase One Development. Until a new Operator and/or a revised Operations Agreement for the Phase One Development is approved by Housing Authority, the previously approved Operator and/or Operations Agreement shall remain and govern with respect to the operation of the Phase One Development. Notwithstanding the prior terms of this paragraph, so long as the Phase One Development is encumbered by a mortgage, deed of trust, or other security instrument permitted by this Agreement, the approval by the holder of such mortgage, deed of trust or other security instrument of a proposed new Operator and/or revised Operations Agreement shall be deemed to constitute approval by Housing Authority as well without need for further action or approval by Housing Authority

1.4.2 Services Plan. Within the time set forth in the Schedule of Performance, Developer shall submit for Housing Authority review Developer's plans for the provision of support services and amenities to the residents of the Phase One Development ("**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) and shall describe the nature of the congregate care and assisted living services to be provided to residents of the Phase One Development. As set forth in Exhibit B, these services are expected to include meals, housekeeping, scheduled transportation in the community shuttle bus, programmed activities and events, health, fitness, recreational and educational programs and assistance with the activities of daily living such as assistance with medication management, grooming, mobility and other personal care and services. By Operating Memoranda prepared and approved in accordance with Section 10.20, the Parties may incorporate such changes to the framework of resident services as set forth in Exhibit B as they deem mutually appropriate.

Housing Authority staff shall promptly review the proposed Services Plan, and acting through Housing Authority's Executive Director, Housing Authority shall approve such plan in writing within thirty (30) business days following receipt provided that the plan conforms to the requirements of this Section 1.4.2. If Housing Authority does not approve the Services Plan, Housing Authority 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 Housing Authority 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. Housing Authority's approval of the Services Plan shall be a condition precedent to Housing Authority's obligation to convey the Property in its entirety to Developer.

Developer shall submit any material revision to the approved Services Plan to Housing Authority for its review and approval. Housing Authority staff shall promptly review the proposed revised Services Plan, and acting through Housing Authority's Executive Director, Housing Authority shall approve the revised Services Plan in writing within thirty (30) business days following receipt provided that the revised Services Plan conforms to the requirements of this Section. If Housing Authority does not approve the revised Services Plan, Housing Authority 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 Housing Authority 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 Housing Authority, the previously approved Services Plan shall govern with respect to the provision of support services for the Phase One Development.

Section 1.5 Execution and Delivery of Documents. Developer shall execute, acknowledge as applicable, and deliver to Housing Authority this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation the Phase One Regulatory Agreement, the Phase Two Regulatory Agreement, 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), and a Notice of Affordability Restrictions On Transfer of Property for the Phase Two Affordable Units (a "**Phase Two 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 Two Regulatory Agreement, the Phase One Notice of Affordability, the Phase Two Notice of Affordability, the Grant Deed (as defined in Section 3.1 below) for the Property, and the Memorandum (as defined in Section 1.7 below) are hereinafter referred to collectively as the "**Housing Authority Documents**."

Section 1.6 Insurance. Prior to and as a further condition of Housing Authority conveyance of the Property to Developer, Developer shall provide evidence reasonably satisfactory to Housing Authority that Developer has obtained insurance coverage meeting the requirements set forth in Section 5.11.1 with respect to the Phase One Parcel and the Phase One Development. Prior to and as a further condition of commencement of construction of the Phase Two Development by Developer, Developer shall provide evidence reasonably satisfactory to Housing Authority that Developer has obtained insurance coverage meeting the requirements set forth in Section 5.11.2 with respect to the Phase Two Parcel and the Phase Two Development.

Section 1.7 Memorandum. Developer and Housing Authority shall execute and acknowledge a Memorandum of this Agreement ("**Memorandum**") substantially in the form attached hereto as Exhibit G, and Housing Authority shall cause the Memorandum to be recorded in the Official Records of Santa Clara County promptly following the Amendment Effective Date.

ARTICLE 2.

[INTENTIONALLY OMITTED]

ARTICLE 3.

DISPOSITION OF THE PROPERTY

Section 3.1 Purchase and Sale of Property. Provided that all conditions precedent set forth in this Agreement to conveyance of the Property related to development of the Phase One Development on the Phase One Parcel have been satisfied or waived, Housing Authority shall sell to Developer, and Developer shall purchase from Housing Authority, the fee interest in the entire Property 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 Housing Authority 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 Property, and (e) those additional title exceptions identified in that certain preliminary title report issued by Old Republic Title Company dated October 3, 2013 (Order Number 1117012669-JM). All of the foregoing are collectively hereinafter referred to as the "**Permitted Exceptions.**" Conveyance of the Property shall be effectuated by grant deed substantially in the form attached hereto as Exhibit F (the "**Grant Deed"**).

Section 3.2 Purchase Price. The purchase price for the Property ("**Purchase Price**") shall be Two Dollars ($2.00), consisting of One Dollar ($1.00) attributable to the purchase of the Phase One Parcel portion of the Property and One Dollar ($1.00) attributable to the purchase of the Phase Two Parcel portion of the Property. The Purchase Price shall be payable in cash by Developer to Housing Authority at and through the Closing (described and defined in Section 3.3 below).

Section 3.3 Escrow. Within the time set forth in the Schedule of Performance, Housing Authority and Developer shall open escrow at the office of Old Republic Title Company located in Oakland, California, or such other title company as the Parties may agree upon ("**Title Company**" or "**Escrow Agent**") in order to consummate the conveyance of the Property in its entirety to Developer and the closing of escrow (**"Closing**") for the transaction contemplated hereby.

Section 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 the Property 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 the Property and the financing of each Development Phase. Property taxes and assessments shall be prorated as of the date of Closing for the Property in its entirety ("**Closing Date**").

Section 3.5 Escrow Instructions; Deposit of Funds; Recordation of Documents. Housing Authority and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as Housing Authority or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by Housing Authority and Developer, shall serve as escrow instructions for the conveyance of the Property in its entirety to Developer.

Section 3.6 Closing Date. Within the time period set forth in the Schedule of Performance, Developer shall deposit into escrow the Purchase Price, the balance of any other funds Developer is obligated to pay to Housing Authority pursuant to this Agreement with respect to the Closing, and the Housing Authority Documents, executed and acknowledged as applicable. Provided that all conditions precedent set forth in this Agreement to conveyance of the Property related to development of the Phase One Development on the Phase One Parcel have been satisfied or waived, Housing Authority shall deposit into escrow the executed Grant Deed and executed copies of the other Housing Authority Documents to which Housing Authority is a party for the Property. On the Closing Date the Escrow Agent shall cause the Grant Deed for the Property and the other Housing Authority Documents to be recorded in the Official Records of Santa Clara County.

The Closing Date for the Property shall be a date no later than twenty-four (24) months after the Amendment Effective Date ("**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 Property related to the development of the Phase One Development on the Phase One Parcel as set forth in Articles 1 and 3. The Closing Deadline may be extended by Operating Memorandum executed by the Parties in accordance with Section 11.20.

Section 3.7 Conditions to Closing. In addition to the conditions precedent to Closing set forth in Articles 1 and 3, the Closing for conveyance of the Property is conditioned upon the satisfaction of the terms and conditions set forth in Sections 3.7.1 and 3.7.2.

3.7.1 Housing Authority's Conditions to Closing. Housing Authority's obligation to proceed with the Closing for conveyance of the Property is subject to Developer's satisfaction or Housing Authority'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 Housing Authority 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 Housing Authority 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 Property.

(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 Housing Authority Documents for the Property, including execution and delivery for recordation of the Revised VTM and the Final Map for the entire Property.

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

(e) Satisfaction of Conditions Precedent. Developer shall have satisfied all of Developer's obligations set forth in Article 1 and 3 with respect to the Phase One Parcel and the Phase One Development to the Housing Authority’s satisfaction.

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

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

(b) Execution of Documents. Housing Authority shall have executed and acknowledged the Housing Authority Documents and any other documents required hereunder with respect to conveyance of the Property, and shall have delivered such documents into escrow.

(c) Title Policy. The Title Company shall, upon payment of the premium therefore, be ready to issue an ALTA Owner's Title Insurance Policy for the benefit and

protection of Developer ("**Title Policy**") showing title to Property 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 Phase One Development on the Phase One Parcel, as further provided in Section 1.3.3.

(e) Entitlements/Approvals. The City has granted the Entitlements for the Project and all other permits and approvals necessary to develop the Phase One Development, as further provided in Section 1.3.5, and provision has been made for delivery and recordation of the Final VTM and the Final Map for the entire Property, concurrently with the Closing for conveyance of the Property to Developer.

ARTICLE 4.

CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

Section 4.1 Access to Site; Inspections. Housing Authority 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. Housing Authority may require Developer to execute a right of entry agreement and obtain insurance satisfactory to Housing Authority 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 Housing Authority 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 Housing Authority) and hold City and Housing Authority 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 the Property and the termination of this Agreement.

Section 4.2 AS-IS Sale. Developer acknowledges and agrees that: (i) prior to the Closing Date, 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 the

Property, Developer shall be deemed to have approved of all such characteristics and conditions; and (iii) the Property 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 Property or the improvements thereon whether or not known or discovered, shall affect the rights of either Housing Authority or Developer hereunder. Developer shall rely solely upon its own independent investigation concerning the physical condition of the Property and its compliance with applicable statutes, ordinances, rules and regulations. Housing Authority shall have no responsibility for site preparation, demolition, or any other removal or replacement of improvements on the Property.

If following conveyance of the Property, the condition of the Property is not in all respects entirely suitable for the uses to which the Property 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 Property in a condition suitable for the Project to be constructed pursuant to this Agreement. Developer hereby waives any right to seek reimbursement from Housing Authority for costs Developer incurs in connection with the correction of any physical condition on the Property.

Section 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

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

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

(a) 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.

(b) 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.

(c) Upon receiving actual knowledge of the same, Developer shall immediately advise Housing Authority 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**". Housing Authority 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 Developer.

(d) Without Housing Authority'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 Housing Authority 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 Housing Authority) 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 Housing Authority or City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the Housing Authority or the City obtained such information from the Developer or from its own investigations.

4.4.4 Definitions.

(a) 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, Housing Authority 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.

(b) 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.

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

ARTICLE 5.

DEVELOPMENT OF THE PROJECT

Section 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 Housing Authority and Developer or by operation of Section 10.2. Developer and Housing Authority, 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 10.20) without formal amendment of this Agreement. Without limiting the foregoing, Developer shall commence construction of each Development Phase within the respective times set forth in the Schedule of Performance, 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 10.2. 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.

Section 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 the Property, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. Except as expressly set forth herein, all costs of designing, developing and constructing the Project and compliance with the 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 Housing Authority. 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.

Section 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 Entitlements, the other approvals for the applicable Development Phase including the Conditions of Approval and the Project Mitigation Measures imposed by the City in connection with the Entitlements (which Conditions of Approval and Project Mitigation Measures as imposed by the City are incorporated in this Agreement by this reference and are hereby made requirements for the development of each Development Phase), and any other plans or development approvals issued by the City, and shall not materially deviate therefrom without the express written consent of Housing Authority. 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 Housing Authority.

Section 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. Housing Authority staff shall render all reasonable assistance to Developer to obtain such building permits. Developer shall pay City's usual and customary plan check, development impact, 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.

Section 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 City and/or Housing Authority 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 Housing Authority 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.

Section 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 Housing Authority 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 Entitlements, and the Conditions of Approval. Unless such proposed change is rejected within thirty (30) days, Housing Authority 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.

Section 5.7 Defects in Plans. Neither Housing Authority 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 Housing Authority) 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 Housing Authority 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 Housing

Authority or City, or Developer's deposit with Housing Authority of any of the insurance policies described in this Agreement.

Section 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.

Section 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.

Developer shall, and hereby agrees to indemnify, defend (with counsel approved by Housing Authority), 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 Housing Authority, 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 Housing Authority 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 Housing Authority or City, or Developer's deposit with Housing Authority of any of the insurance policies described in this Agreement.

Section 5.10 Performance and Payment Bond(s).

5.10.1 Basic Requirement. Within the time specified in the Schedule of Performance for each Development Phase, Developer shall deliver to Housing Authority 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 Housing Authority and City as co-obligees.

5.10.2 Alternative Compliance. In lieu of such performance and payment bonds, Developer may submit evidence satisfactory to Housing Authority of 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 Housing Authority required for any withdrawal, a completion guaranty in a form and from a guarantor

acceptable to Housing Authority, or Subguard Insurance from a general contractor. Such evidence must be submitted in approvable form in sufficient time to allow the Housing Authority to review and approve the information within the time specified in the Schedule of Performance.

Section 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-1), except as otherwise provided in Section 6.7 of the Form of Phase One Regulatory Agreement.

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 Exhibit B to the Form of Phase Two Regulatory Agreement (which is attached hereto as Exhibit H-2), except as otherwise provided in Section 6.6 of the Form of Phase Two Regulatory Agreement.

Section 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, Housing Authority shall provide an instrument so certifying in substantially the form attached hereto as Exhibit I ("**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 Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust 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 6 hereof) have been fulfilled.

Section 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.

Section 5.14 Indemnity. Developer shall defend (with counsel approved by Housing Authority), 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.

Section 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 expiration of the Phase Two Regulatory Agreement 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; (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 Housing Authority that the claim of lien or stop notice will be paid or discharged; or (c) contest in good faith the lien or stop notice.

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

Section 5.17 Housing Authority Rights of Access. Developer shall permit Housing Authority through its officers, agents, or employees, during normal business hours, and accompanied by a representative of Developer, to enter into the Project following 24-hours written notice from Housing Authority (except in the case of emergency in which case Housing Authority 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 Housing Authority 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.

Section 5.18 Housing Authority Disclaimer. Developer acknowledges that the Housing Authority is under no obligation, and Housing Authority 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 Housing Authority is solely for the purpose of determining whether Developer is properly discharging its obligations to Housing Authority, and shall not be relied upon by Developer or any third party as a warranty or representation by Housing Authority as to the quality of the design or construction of the Improvements or otherwise.

ARTICLE 6.

USE OF THE PROPERTY

Section 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, this Agreement, and the Phase One Regulatory Agreement, or the Phase Two Regulatory Agreement, as applicable. 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, (a) the covenants against discrimination specified in Section 6.5 of this Agreement shall be perpetual, (b) 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, (c) the covenants regarding provision of the Phase One Affordable Units and the other provisions regarding the Phase One Development specified 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, (d) the covenants regarding provision of the Phase Two Affordable Units and the other provisions regarding the Phase Two Development specified in the Phase Two 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 Two Development, and (e) the conditions set forth in the Entitlements for the Property shall be perpetual or as otherwise specifically indicated in the Entitlements.

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

Section 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 term of the Phase Two Regulatory Agreement with respect to the Phase Two Parcel and the Phase Two Development, a condition in contravention of the above maintenance standard, then Housing Authority shall notify Developer in writing of such condition, giving Developer thirty (30) days from receipt of such notice to cure, or commence to cure and thereafter diligently prosecute to completion the cure of, such condition. In the event Developer fails to cure or commence to cure the condition within the time allowed, Housing Authority shall have the right to perform all acts necessary to cure such condition, or to pursue such other remedy available to Housing Authority and to receive from Developer the Housing Authority's cost in taking such action. The Parties further mutually understand and agree that the rights conferred upon Housing Authority 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 Housing Authority, its successors and assigns. Nothing in the foregoing provisions shall preclude 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.

Section 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 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, 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.

Section 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:

6.5.1 In Deeds:

"(a) 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.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) 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 (a) 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 (a)."

6.5.2 In Leases:

"(a) 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.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) 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 (a) 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)."

6.5.3 In Contracts:

"(a) 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.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) 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 (a) 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 7.

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

Section 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 Housing Authority. It is because of those qualifications, experience, financial capability and expertise that Housing Authority 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.

Section 7.2 Prohibition on Transfer and Significant Change of Ownership. Prior to the expiration of the term of the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development), or the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel and the Phase Two Development), Developer shall not, except as expressly permitted by this Agreement, the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development), or the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel and the Phase Two Development):

(a) 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 Housing Authority which the Housing Authority may withhold in its sole and absolute discretion. Any such attempt to assign this Agreement without Housing

Authority's consent shall be null and void and shall confer no rights or privileges upon the purported assignee.

(b) Undergo any Significant Change of Ownership without the prior written approval of Housing Authority. For purposes of this Agreement, a "**Significant Change of Ownership**" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis.

(c) As used in this Agreement, the Phase One Regulatory Agreement, and the Phase Two Regulatory Agreement, the term "Transfer" shall include a Significant Change of Ownership.

Section 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 Entitlements and the Conditions of Approval;

(c) the lease of individual residences to tenants for occupancy as their principal residence;

(d) 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 8) or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; provided, however, that in no event shall a security interest in connection with financing for the Phase Two Development be placed upon or encumber the Phase Two Parcel prior to the date that all of the Phase Two Development Commencement Requirements set forth in Section 1.3 have been satisfied by Developer or waived by Housing Authority;

(e) 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;

(f) A Significant Change of Ownership consisting of an adjustment of the membership ownership percentages among the Developer Principals, or of the assignment and transfer of the ownership interest of one or more Developer Principals to a wholly owned affiliate of the Developer Principal(s) making such assignment and transfer;

(g) 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 or the Phase Two Development;

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

3. Developer notifies Housing Authority not less than sixty (60) days prior to the proposed Significant Change in Ownership of such change, and Housing Authority'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.

(h) 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.

(i) With respect to the Phase Two Parcel and the Phase Two Development, any Transfer consistent with Section 8.1 or Section 8.2 of the form of Phase Two Regulatory Agreement attached hereto as Exhibit H-1, regardless of whether such Transfer occurs prior to or following execution and recordation of the Phase Two Regulatory Agreement.

(j) With respect to the Phase Two Parcel and the Phase Two Development, any Transfer to a limited liability company or other legal entity in which the members (owners) consist of at least at least three of the Development Principals or wholly owned affiliate(s) of at least three of the Developer Principal(s).

(k) Any Transfer occurring after expiration of the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development), or after the expiration of the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel and the Phase Two Development).

Upon request of Developer, Housing Authority 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.

Section 7.4 Requirements for Other Proposed Transfers. Housing Authority 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):

(a) The proposed transferee demonstrates to Housing Authority's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Housing Authority to competently complete construction of the

Project (or applicable portion thereof) and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(b) Developer and the proposed transferee shall submit for Housing Authority 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 Housing Authority may reasonably request.

(c) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under the Housing Authority 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).

(d) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Housing Authority 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 Housing Authority's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Housing Authority's governing board.

Section 7.5 Effect of Transfer without Housing Authority Consent.

7.5.1 In the absence of specific written agreement by the Housing Authority, 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 7, 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, Housing Authority 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 Developer to Housing Authority 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 Housing Authority by Developer and until so paid, Housing Authority 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 Housing Authority may have under this Agreement, or under law or equity, this Agreement may be terminated by Housing Authority with respect to the affected Development Parcel and Development Phase if, in violation of this

Article 7, Developer assigns or Transfers this Agreement or the Property prior to the Housing Authority's issuance of a Certificate of Completion for such Development Parcel and Development Phase.

ARTICLE 8.

FINANCING AND RIGHTS OF MORTGAGEES

Section 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 Housing Authority'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 Housing Authority's reversionary interest in the Property shall not be defeated as a result of foreclosure of any such instrument.

Section 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.

Section 8.3 Notice of Default; Right to Cure. Whenever Housing Authority delivers any notice of default or demand to Developer with respect to the commencement, completion, or

cessation of the construction of a Development Phase, Housing Authority 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 Housing Authority has been provided an address for such notices. Housing Authority shall have no liability to any such holder for any failure by the Housing Authority 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 Housing Authority 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.

Section 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 9.3 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, Housing Authority shall be afforded those rights against such holder it would otherwise have against the Developer under this Agreement. In addition, Housing Authority 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, Housing Authority 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 Housing Authority.

Section 8.5 Right of Housing Authority 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, Housing Authority 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 Housing Authority shall be entitled to reimbursement from Developer for all costs and expenses incurred by Housing Authority associated with and attributable to the curing of the default or breach. Housing Authority shall also be entitled to record a lien upon the applicable Development Parcel to the extent of such incurred costs and disbursements.

Section 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 8 shall be incorporated into the relevant deed of trust or mortgage to the extent deemed necessary by, and in form and substance reasonably satisfactorily to Housing Authority, or shall be acknowledged by the holder of such instrument prior to its creating any security right or interest in the applicable Development Parcel.

Section 8.7 Estoppel Certificates. Either Developer or Housing Authority 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. Housing Authority Executive Director is authorized to execute any certificate requested by Developer hereunder.

Section 8.8 Modifications; FHA-Required Provisions. If a lender with respect to debt financing described in the approved Financing Plan for a Development Phase should, as a condition of providing financing for development of all or a portion of that Development Phase, request any modification of this Agreement in order to protect its interests in the Development Phase or this Agreement, Housing Authority shall consider and act upon such request in good faith and within a reasonable time period.

ARTICLE 9.

DEFAULTS AND REMEDIES

Section 9.1 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 Housing Authority's obligation to convey the Property to Developer, set forth in Articles 1 and 3, by not later than the Closing Deadline established pursuant to Section 3.6;

(b) Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to commencement of construction of the Phase Two Development by Developer, set forth in Articles 1 and 3, by not later than the deadline set forth in the Schedule of Performance for such construction commencements;

(c) Housing Authority, despite good faith and diligent efforts, is unable to convey the Property 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 Housing Authority in writing of such determination no later than one hundred eighty (180) days from the Amendment 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, 4.4.2, 5.7, 5.9, 5.14, 10.1 and 10.19 shall survive such termination and remain in full force and effect.

Notwithstanding the foregoing, in connection with an event described in paragraph (b) above, 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.

Section 9.2 Fault of Housing Authority. Except as to events constituting a basis for termination under Section 9.1, and provided further that the Developer has satisfied its obligations hereunder, the following events shall constitute a "**Housing Authority Event of Default**":

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

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

Upon the occurrence of either of the above-described events, Developer shall first notify Housing Authority in writing of its purported breach or failure, giving Housing Authority 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 Housing Authority 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, Housing Authority 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 a Housing Authority 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 Housing Authority (provided, however, that the indemnification provisions of Sections 4.1, 4.4.2, 5.7, 5.9, 5.14, 10.1 and 10.19 shall survive such termination); (2) terminating this Agreement only with respect to the Development Parcel and accompanying Development Phase to which the Housing Authority 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 Housing Authority upon the occurrence of a Housing Authority Event of Default or upon termination of this Agreement.

Section 9.3 Fault of the Developer. Except as to events constituting a basis for termination under Section 9.1, and provided further that Housing Authority has satisfied its obligations hereunder, the following events shall each constitute a **"Developer Event of Default"**:

(a) Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner set forth in Article 1 and Article 3, one or more of the conditions precedent to the Housing Authority's obligation to convey the Property to the Developer;

(b) Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner specified in Article 1 and Article 3, one or more of the conditions precedent to commencement of construction of the Phase Two Development by Developer;

(c) Developer refuses to accept conveyance of the Property within the time periods and under the terms set forth in Article 3;

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

(e) 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;

(f) Developer fails to commence or complete construction of a Development Phase within the times set forth in Article 5 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;

(g) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 7;

(h) Developer fails to maintain insurance on the Property and the Project as required pursuant to the Housing Authority Documents;

(i) Subject to Developer's right to contest the following charges pursuant to the Housing Authority Documents, if Developer fails to pay taxes or assessments due on a 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;.

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

(k) A court having jurisdiction shall have made or entered any decree or order (1) adjudging 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 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 Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of Developer;

(l) 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;

(m) Developer shall have voluntarily suspended its business or Developer's partnership shall have been dissolved or terminated; or

(n) 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 9.3 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 Housing Authority 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, Housing Authority 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 (d) through (n) above, Developer shall have thirty (30) days after the date upon which Housing Authority 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.

Section 9.4 Legal Actions. Upon the occurrence of a default and the expiration of the applicable cure period, the non-defaulting 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; provided, however, as further set forth in Section 9.2, in no event shall damages be awarded against City or Housing Authority upon the occurrence of an Housing Authority Event of Default or upon termination 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.

Section 9.5 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.

Section 9.6 Special Remedies Prior To Phase One Development Certificate of Completion.

9.6.1 Right of Reverter. If following conveyance of the Property to Developer and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development, Developer: (i) fails to begin construction of the Phase One Development 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 Phase One Development for a period of sixty (60) days after written notice from Housing Authority; (iii) fails to complete construction of the Phase One Development 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 Property (or any portion thereof)

or this Agreement in violation of Article 7, Housing Authority may re-enter and take possession of Property or any portion thereof with all improvements thereon without payment or compensation to Developer, and revest in Housing Authority the estate theretofore conveyed to the Developer. The interest created pursuant to this Section 9.6.1 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from Housing Authority's option to purchase the Property under the same or similar conditions specified in Section 9.6.2. Housing Authority's rights pursuant to this Section 9.6.1 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.

The Parties shall accomplish the re-entry, possession, and revesting contemplated by this Section 9.6.1 in the manner specified in Section 9.12.

Upon revesting in Housing Authority of title to the Property or any portion thereof as provided in this Section 9.6.1, Housing Authority shall use its best efforts to resell the Property 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 Housing Authority) who will assume the obligation of making or completing the Project in accordance with the uses specified for such Property in this Agreement and in a manner satisfactory to Housing Authority. Upon such resale of the Property or any portion thereof the sale proceeds shall be applied as follows:

(a) First, to reimburse Housing Authority for all costs and expenses incurred by Housing Authority, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture and resale of the Property; 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 Property at the time of revesting of title thereto in Housing Authority or to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project or any part thereof on the Property; and any other amounts owed to the Housing Authority by Developer and its successors or transferee.

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

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

1. The Purchase Price paid to Housing Authority for the Property; plus

2. The fair market value of the improvements Developer has placed on the Property or applicable portion thereof; less

3. Any gains or income withdrawn or made by Developer from the Property 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 Property or applicable portion thereof, together with the improvements thereon as of the date of the default or failure which gave rise to Housing Authority's exercise of the right of reverter.

(d) Any balance remaining after such reimbursements shall be retained by Housing Authority.

The rights established in this Section 9.6.1 are to be interpreted in light of the fact that Housing Authority will convey the Property to Developer for development as specified herein and not for speculation. The rights established in this Section 9.6.1 shall terminate and be of no further force and effect upon the date that Developer is first entitled to issuance of a Certificate of Completion for the Phase One Development.

9.6.2 Option to Purchase, Enter and Possess. Housing Authority shall have the additional right at its option to purchase, enter and take possession of the Property or any portion thereof owned by Developer with all improvements thereon (the "**Property Repurchase Option**"), if after conveyance of the Property and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development, Developer: (i) fails to begin construction of the Phase One Development 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 Phase One Development for a period of sixty (60) days after written notice from Housing Authority; (iii) fails to complete construction of the Phase One Development 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 Property (or portion thereof) or this Agreement in violation of Article 7. The rights established in this Section 9.6.2 shall terminate and be of no further force and effect upon the date that Developer is first entitled to issuance of a Certificate of Completion for the Phase One Development.

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

(a) The Purchase Price paid to Housing Authority by Developer for the Property; plus

(b) The fair market value of any new improvements existing on the Property at the time of exercise of the Property Repurchase Option; less

(c) Any gains or income withdrawn or made by the Developer from the Property or the improvements thereon; less

(d) The value of any liens or encumbrances on the Property which Housing Authority assumes or takes subject to; less

(e) Any damages to which Housing Authority is entitled under this Agreement by reason of Developer's default.

In order to exercise the Property Repurchase Option, Housing Authority shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Housing Authority with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Housing Authority's receipt of such summary, Housing Authority shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.6.2, and Developer shall execute and deposit into such escrow a grant deed transferring to Housing Authority 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 Housing Authority's determination of the amount of all sums owing to Developer pursuant to this Section 9.6.2.

Section 9.7 Special Remedies Prior To Phase Two Development Certificate of Completion.

9.7.1 Special Option to Purchase, Enter and Possess Upon Failure to Timely Commence Phase Two Development. Housing Authority shall have the additional right at its option to purchase, enter and take possession of the Phase Two Parcel or any portion thereof owned by Developer with all improvements thereon (**"Special Phase Two Repurchase Option"**), if following the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development and prior to the date Developer commences construction of the Phase Two Development, Developer: (i) fails to satisfy or obtain a waiver from Housing Authority for all conditions precedent and set forth in Articles 1 and 3 to commencement of construction of the Phase Two Development by Developer within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (ii) fails to begin construction of the Phase Two Development within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; or (iii) directly or indirectly, voluntarily or involuntarily Transfers the Phase Two Parcel or this Agreement in violation of Article 7. The rights established in this Section 9.7.1 shall terminate and be of no further force and effect upon the date that Developer commences construction of the Phase Two Development.

In order to exercise the Special Phase Two Repurchase Option, Housing Authority shall give Developer notice of such exercise. Within thirty (30) days after Developer's receipt of Housing Authority's notice of exercise of the Special Phase Two Repurchase Option, Housing Authority shall pay into an escrow established for such purpose cash in the amount of One Dollar ($1.00), representing the portion of the Purchase Price paid by Developer attributable to the Phase Two Parcel, and Developer shall execute and deposit into such escrow a grant deed transferring to Housing Authority all of Developer's interest in the Phase Two Parcel.

In no event shall the Special Phase Two Repurchase Option provided in this Section 9.7.1 affect or apply in any manner whatsoever to the Phase One Parcel and the Phase One Development.

9.7.2 Right of Reverter. If following the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase Two Development, Developer: (i) fails to satisfy or obtain a waiver from Housing Authority for all conditions precedent and set forth in Articles 1 and 3 to commencement of construction of the Phase Two Development by

Developer within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (ii) fails to begin construction of the Phase Two Development within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (iii) abandons or suspends construction of the Phase Two Development for a period of sixty (60) days after written notice from Housing Authority; (iv) fails to complete construction of the Phase Two Development by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; or (v) directly or indirectly, voluntarily or involuntarily Transfers the Phase Two Parcel, the Phase Two Development or this Agreement in violation of Article 7, Housing Authority may re-enter and take possession of the Phase Two Parcel or any portion thereof with all improvements thereon without payment or compensation to Developer, and revest in Housing Authority the estate theretofore conveyed to the Developer. The interest created pursuant to this Section 9.7.2 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from Housing Authority's option to purchase the Phase Two Parcel under the same or similar conditions specified in Sections 9.7.1 and 9.7.3. Housing Authority's rights pursuant to this Section 9.7.2 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.

The Parties shall accomplish the re-entry, possession, and revesting contemplated by this Section 9.7.2 in the manner specified in Section 9.12.

Upon revesting in Housing Authority of title to the Phase Two Parcel or any portion thereof as provided in this Section 9.7.2, Housing Authority shall use its best efforts to resell the Phase Two 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 Housing Authority) who will assume the obligation of making or completing the Phase Two Development in accordance with the uses specified for such property in this Agreement and in a manner satisfactory to Housing Authority. Upon such resale of the Phase Two Parcel or any portion thereof the sale proceeds shall be applied as follows:

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

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

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

1. The Purchase Price paid to Housing Authority for the Phase Two Parcel; plus

2. The fair market value of the improvements Developer has placed on the Phase Two Parcel or applicable portion thereof; less

3. Any gains or income withdrawn or made by the Developer from the Phase Two Parcel or applicable portion thereof or the improvements thereon.

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

5. Any balance remaining after such reimbursements shall be retained by Housing Authority.

The rights established in this Section 9.7.2 are to be interpreted in light of the fact that Housing Authority will convey the Phase Two Parcel to the Developer for development as specified herein and not for speculation. The rights established in this Section 9.7.2 shall terminate and be of no further force and effect on the date Developer is first entitled to issuance of a Certificate of Completion for the Phase Two Development. In no event shall the right of reverter provided in this Section 9.7.2 affect or apply in any manner whatsoever to the Phase One Parcel and the Phase One Development.

9.7.3 General Option to Purchase, Enter and Possess. Housing Authority shall have the additional right at its option to purchase, enter and take possession of the Phase Two Parcel or any portion thereof owned by Developer with all improvements thereon (**"General Phase Two Repurchase Option"**), if after the time Developer has commenced construction of the Phase Two Development and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase Two Development, Developer: (i) abandons or suspends construction of the Phase Two Development for a period of sixty (60) days after written notice from Housing Authority, (ii) fails to complete construction of the Phase Two Development by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof, or (iii) directly or indirectly, voluntarily or involuntarily Transfers the Phase Two Parcel or this Agreement in violation of Article 7. The rights established in this Section 9.7.3 shall terminate and be of no further force and effect upon the date that Developer is first entitled to issuance of a Certificate of Completion for the Phase Two Development.

To exercise the General Phase Two Repurchase Option, Housing Authority shall pay to the Developer cash in an amount equal to:

(a) The Purchase Price paid to Housing Authority by Developer for the Phase Two Parcel; plus

(b) The fair market value of any new improvements existing on the Phase Two Parcel at the time of exercise of the Phase Two Parcel Repurchase Option; less

(c) Any gains or income withdrawn or made by Developer from the Phase Two Parcel or the improvements thereon; less

(d) The value of any liens or encumbrances on the Phase Two Parcel which Housing Authority assumes or takes subject to; less

(e) Any damages to which Housing Authority is entitled under this Agreement by reason of Developer's default.

In order to exercise the General Phase Two Repurchase Option, Housing Authority shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Housing Authority with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Housing Authority's receipt of such summary, Housing Authority shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.7.3, and Developer shall execute and deposit into such escrow a grant deed transferring to Housing Authority all of Developer's interest in the Phase Two Parcel, or portion thereof, as applicable and the improvements located thereon; provided, however, that Developer may contest by appropriate legal action Housing Authority's determination of the amount of all sums owing to Developer pursuant to this Section 9.7.3.

In no event shall the General Phase Two Repurchase Option provided in this Section 9.7.3 affect or apply in any manner whatsoever to the Phase One Parcel and the Phase One Development.

Section 9.8 Memorandum of Right of Reverter/Option to Purchase. The Parties shall cause a memorandum or memoranda of the rights granted Housing Authority in Sections 9.6 and 9.7 of this Agreement to be recorded in the official records of Santa Clara County at the time of the Closing for conveyance of the Property in its entirety to Developer. In lieu of such memorandum, the rights afforded Housing Authority pursuant to Sections 9.6 and 9.7 may be described in the Grant Deed for the Property.

Section 9.9 Construction Plans. If this Agreement is terminated pursuant to Section 9.1, Developer, at no cost to Housing Authority, shall deliver to Housing Authority copies of any construction plans and studies in Developer' possession or in the possession of 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 Housing Authority utilizes the construction plans or studies, the Housing Authority shall indemnify Developer for any claims arising from the use of construction plans or studies by the Housing Authority pursuant to this Section 9.9.

Section 9.10 Rights of Mortgagees. Any rights of Housing Authority under this Article 9 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 Housing Authority pursuant to this Article 9 shall be subject to mortgages and deeds of trust permitted by this Agreement.

Section 9.11 Additional Provisions Regarding Options to Purchase. With respect to the Property Repurchase Option granted in Section 9.6.2, the Special Phase Two Repurchase Option granted in Section 9.7.1, and the General Phase Two Repurchase Option granted in Section 9.7.3 (collectively, **"Repurchase Options"**), Developer acknowledges and agrees that:

(a) Housing Authority has paid and provided valid and sufficient independent consideration for the grant by Developer of the Repurchase Options in the form of the duties and obligations to which Housing Authority has bound itself by execution of this Agreement;

(b) Housing Authority shall have the right and remedy, among any other available rights and remedies, to seek and obtain specific performance of the Repurchase Options in accordance with their respective terms;

(c) Developer expressly waives its right to contest a Housing Authority request to a court of competent jurisdiction to seek specific performance of one or more Repurchase Option(s) on the basis that the Repurchase Options are not subject to the remedy of specific performance (provided, however, that nothing in this Agreement shall prevent Developer from contesting Housing Authority's right to specific performance on the separate basis that the terms of this Agreement allowing Housing Authority to exercise one or more Repurchase Option(s) have not been met); and

(d) Housing Authority would not have entered into this Agreement without Housing Authority's right to enforce the Repurchase Options in accordance with their terms, including, without limitation, the right to obtain specific performance of the Repurchase Options.

Section 9.12 Mechanics of Revesting. The Parties shall implement the following procedures in the circumstances in which Housing Authority is authorized and desires to exercise the rights and remedies set forth in Section 9.6.1 or Section 9.7.2 ("**Revesting Rights**").

(a) Housing Authority shall provide written notice to Developer and to any holder of a security financing instrument for financing authorized by this Agreement with respect to the portion(s) of the Property to which the Revesting Rights apply ("**Holder**"), which notice shall state in reasonable detail the nature of Developer's alleged default and the manner in which Developer or Holder can cure the default. Developer or Holder shall have a period of twenty (20) business days after receipt of written notice (the "**Notice Period**") to cure such default. During the Notice Period, Developer or Holder shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer or Holder shall be deemed to have timely cured such default for purposes of this Section if Developer or Holder commences to cure the default within the Notice Period and prosecutes the same to completion within a reasonable time thereafter.

(b) Upon the failure to cure a default as described above, Housing Authority may exercise its Revesting Rights by delivering notice thereof in writing to Developer and any Holder and recording such notice ("Notice of Exercise"). The delivery and recording of the Notice of Exercise shall apply to re-vest in Housing Authority, or its successors or assigns, the portion(s) of the Property to which the Revesting Rights apply together with any and all improvements thereon and rights or interests appurtenant thereto on the terms and conditions set forth in this Section and Section 9.6.1 or Section 9.7.2, as applicable.

(c) Within ten (10) business days of Housing Authority delivering the Notice of Exercise, an escrow ("**Revesting Escrow**") shall be opened by Housing Authority with an escrow company selected by Housing Authority ("**Revesting Escrow Agent**") to evidence the re-vesting of fee title to Housing Authority of the portion(s) of the Property to which the Revesting Rights apply. Housing Authority and Developer shall execute any additional escrow instructions required by Revesting Escrow Agent.

(d) Fee title to the portion(s) of the Property to which the Revesting Rights apply shall revest to Housing Authority free of any and all liens, covenants, restrictions, easements, reservations, or encumbrances, except for (1) those of record existing prior to the conveyance of the Property to Developer, and (2) those permitted by this Agreement ("**Permitted Liens**"), including, without limitation, those liens, covenants, restrictions, easements, reservations, or encumbrances that constitute Permitted Transfers in accordance with Section 7.3. Any and all other liens, covenants, restrictions, easements, reservations, or encumbrances other than the Permitted Liens ("**Unpermitted Liens**") shall be removed by Developer at its sole cost and expense, prior to the applicable portion(s) of the Property revesting to Housing Authority. For any avoidance of doubt, it is understood that Housing Authority's Revesting Rights have first priority over any and all Unpermitted Liens and the applicable portion(s) of the Property shall automatically and without further action of Housing Authority re-vest to Housing Authority clear and free of any Unpermitted Liens. Furthermore, fee title shall revest to Housing Authority at no cost or expense to Housing Authority, including no reimbursement of any kind or payment to Developer or any other party, or any other consideration whatsoever, except as provided in Section 9.6.1 or Section 9.7.2, as applicable.

(e) Within thirty (30) calendar days following the open of the Revesting Escrow, Developer shall deliver to Revesting Escrow Agent an executed and acknowledged Grant Deed ("**Revesting Deed**") approved by Housing Authority for the portion(s) of the Property to which the Revesting Rights apply in favor of Housing Authority.

(f) Revesting Escrow Agent shall record the Revesting Deed upon written notice from Housing Authority that the Revesting Deed is acceptable to Housing Authority and the portion(s) of the Property to which the Revesting Rights apply is/are free and clear of all Unpermitted Liens.

(g) Developer shall cause Revesting Escrow Agent to issue, immediately upon recording the Revesting Deed, a CLTA title insurance policy, or, if requested by Housing Authority an ALTA extended coverage form of title insurance policy, with liability in an amount reasonably specified by Housing Authority insuring title to the portion(s) of the Property to which the Revesting Rights apply as vested in Housing Authority subject only to the Permitted Liens and any other matters agreed upon pursuant to the provisions of this Agreement. Except as otherwise provided herein, Developer shall pay all closing costs in connection with any exercise of the Revesting Rights.

Section 9.13 Mediation. Prior to exercising any right or remedy pursuant to Article 9, the Party that is considering a remedy shall notify the other Party, and the Parties shall mutually seek to conduct a non-binding mediation of the violation or alleged default that is at issue. The Parties shall conduct such mediation with a mediator and under such procedures as they mutually agree for a period not to exceed thirty (30) days, or such longer period as the Parties may agree

in writing. The Parties shall share equally any costs of such mediation process. Following the mediation process, if the mediation does not resolve the matter at issue, the Party that initiated the mediation may proceed to exercise its rights and remedies in accordance with Article 9.

ARTICLE 10.

MISCELLANEOUS PROVISIONS

Section 10.1 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 the Property and the expiration or earlier termination of this Agreement.

Section 10.2 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 City or any other public or governmental agency or entity (other than the acts or failures to act of Housing Authority which shall not excuse performance by Housing Authority), 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, including the Schedule of Performance (Exhibit D), may also be extended in writing by the mutual agreement of Developer and Housing Authority (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 Housing Authority) pursuant to an Operating Memorandum (as defined and described in Section 10.20) without formal amendment of this Agreement.

Housing Authority 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; provided, however, that Housing Authority shall accept as a ground of enforced delay with respect to procurement of loan financing consistent with the approved Financing Plan for the applicable Development Phase any delay in the lender's completion of its standard loan approval or funding procedures beyond the reasonable control of Developer, and under such circumstance

Housing Authority shall not unreasonably deny or delay its approval of an amendment to the Schedule of Performance (Exhibit D) to extend the time for obtaining such lender approval and delivery of loan funding consistent with the approved Financing Plan (and to extend the corresponding Closing Deadline with respect to Phase One Development, or the deadline for commencement of construction with respect to Phase Two Development, as applicable, under the Schedule of Performance (Exhibit D). Except as set forth in the preceding proviso, each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Amendment Effective Date.

Section 10.3 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:

(a) personal delivery, in which case notice is effective upon delivery;

(b) 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;

(c) 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;

(d) 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.

Housing Authority: City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Developer: South Main Senior Lifestyles, LLC
c/o Callahan Property Company, Inc.
5674 Stoneridge Drive, #212
Pleasanton, CA 94588
Attention: Joseph W. Callahan, Jr.

With a copy to: Collaborative Design Architects Inc.
6114 LaSalle Avenue
Oakland, CA 94611
Attention: James R. Burns II

Section 10.4 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.

Section 10.5 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.

Section 10.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article 7, 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.

Section 10.7 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 Housing Authority hereunder and Developer's and Housing Authority'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.

Section 10.8 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.

Section 10.9 Action or Approval. Whenever action and/or approval by Housing Authority is permitted or required under this Agreement, Housing Authority'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 Housing Authority's Board for consideration.

Section 10.10 Entire Agreement. This Agreement, including Exhibits A through I attached hereto and incorporated herein by this reference, together with the other Housing Authority 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.

Section 10.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

Section 10.12 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.

Section 10.13 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.

Section 10.14 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.

Section 10.15 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of Housing Authority or City shall be personally liable to Developer or its successors in interest in the event of any default or breach by Housing Authority or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

Section 10.16 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.

Section 10.17 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.

Section 10.18 Inspection of Books and Records. Upon request, Developer shall permit the Housing Authority 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.

Section 10.19 General Indemnification. Developer shall indemnify, defend (with counsel approved by Housing Authority) 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 City or Housing Authority or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Project or this Agreement. Housing Authority will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. Housing Authority and City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if Housing Authority or City chooses to do so, Developer shall reimburse Housing Authority and City for reasonable attorneys' fees and expenses incurred.

Section 10.20 Operating Memoranda. The Parties acknowledge that the provisions of this Agreement required 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 Housing Authority'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 10.5, and must be approved by Housing Authority's Board.

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

CITY OF MILPITAS HOUSING AUTHORITY

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: _____
Housing Authority Counsel

SOUTH MAIN SENIOR LIFESTYLES, LLC
a California limited liability company

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

By: _____
James R. Burns II,
Managing Member

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

ORDER NO. : 1117012669-JM

EXHIBIT A

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

PARCEL ONE:

Parcels 1 and 2 as shown on that certain Parcel Map recorded January 11, 1995 in Book 662 of Maps, at Pages 5 and 6, together with a portion of Parcel A and a portion of Parcel B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002 as Document No. 16444465, Records of Santa Clara County, California, and as described in the Lot Line Adjustment recorded March 22, 2013, Instrument No. 22142701 of Official Records, more particularly described as follows:

Beginning at the northwest corner of said Parcel 2; thence along the northerly line of said Parcel 2 and the easterly prolongation thereof, South 83° 39' 02" East, a distance of 427.71 feet; thence along a line drawn parallel to and 46.00 feet westerly, measured at right angles to the east line of said Parcel B, South 02° 30' 31" East, a distance of 194.14 feet to the south line of said Parcel B; thence along the south line of Parcel B, Parcel A and Parcel 1, North 83° 39' 02" West, a distance of 466.52 feet to the west line of said Parcel 1; thence along said west line along the arc of a non-tangent curve to the right having a radius of 1,952.00 feet, the center of which bears South 83° 10' 27" East, through a central angle of 02° 57' 55", an arc distance of 101.02 feet; thence North 09° 47' 28" East, a distance of 91.04 feet to the Point of Beginning.

EXCEPTING FROM that portion described as Parcel 2 (662 PM 5) above: 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.

EXCEPTING FROM that portion described as Parcel 1 (662 PM 5) above: 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.

EXCEPTING FROM that portion described as parcel A above: 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.

EXCEPTING FROM that portion described as parcel B above: 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: 086-22-046

(Underlying APN'S: 086-22-033; 086-22-034; Portion APN: 086-22-041
Portion APN: 086-22-042)

PARCEL TWO:

A strip of land 46.00 feet in width, being a portion of Parcel B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002 as Document No. 16444465, Records of Santa Clara County, California, more particularly described as follows:

Beginning at a point on the east line of said Parcel B, distant thereon south 83° 39′ 02″ west, a distance of 474.27 feet from the northwest corner of Parcel 2 of Parcel Map Book 662, Page 5 & 6; thence along the east line of said Parcel B south 02° 30′ 31″ east, a distance of 194.14 feet to the southeast corner of said Parcel B; thence along the south line of said Parcel B, north 83° 39′ 02″ west, a distance of 46.56 feet; thence north 02° 30′ 31″ west, a distance of 194.14 feet to the easterly prolongation of said Parcel 2; thence south 83° 39′ 02″ east, a distance of 46.56 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: 086-22-047 (underlying APN: portion 086-22-042)

PARCEL THREE:

A strip of land 50.00 feet in width being a portion of Parcels A and B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002, as Document No. 16444465, Records of Santa Clara County, California, more particularly described as follows:

Beginning at a point on the west line of said Parcel A, said point being coincident with the northwest corner of Parcel 2 as shown on the Parcel Map in Book 662 of Maps, pages 5 and 6; thence along the common line between Parcel A and Parcel 2 and the easterly prolongation thereof, south 83° 39′ 02″ east, a distance of 474.27 feet to the east line of said Parcel B; thence along the east of said Parcel B, north 02° 32′ 31″ west, a distance of 50.61 feet to the

northeast corner of said Parcel B; thence along the north line of Parcel B, north 83° 39′ 02″ west, a distance of 463.44 feet to the northwest corner of said Parcel B; thence along the west line of said Parcels A and B, south 09° 47′ 28″ west, a distance of 50.10 feet to the point of beginning.

EXCEPTING FROM that portion described as parcel A above: 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.

EXCEPTING FROM that portion described as parcel B above: 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: 086-22-048
(underlying APN's: portion 086-22-041 & 042)

PARCEL FOUR:

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, ETALTO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, 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, 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 2033.00 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 188, OFFICIAL RECORDS.

APN: PORTION 086-22-027

PARCEL FIVE:
PARCEL FIVE-A

A STRIP OF LAND 12 FEET WIDE WHICH IS THE WESTERLY 12 FEET OF THAT CERTAIN 1.178 ACRE PARCEL DESCRIBED IN DEED FROM J. H. GUERRARO ET AL TO THOMAS E. CARDOZA, ET UX, 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, 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 NORTH 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 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 FEETTO THE POINT OF EGINNING.

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 J458 OF OFFICIAL RECORDS AT PAGE 1705, SANTA CLARA COUNTY RECORDS.

PARCEL FIVE-B:

BEGINNING AT A POINT IN THE EASTERLY UNE OF SAN JOSE-MILPUAS 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, 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 MILPUAS 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 LANE, 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 4481, PAGE 251, OF OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF SAID 1.178 ACRE PARCEL OF LAND SOUTH 84° 28′ EAST, .05 FEET; THENCE LEAVING SAID NORTHERLY LINE 8° 57′ 21″ WEST 113.75 FEET TO THE NORTHERLY LINE OF SAID 0.54 ACRE PARCEL CONVEYED TO PACIFIC GAS AND ELECTRIC 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 FIVE-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 3458, 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 IN BOOK 4491 AT PAGE 251 OF OFFICIAL RECORDS, ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 2° 03′ 21″ HAVING A RADIUS FO 2033.00 FEET AN ARC LENGTH OF 72.95 FEET TO THE POINT OF BEGINNING.

APN: PORTION 086-22-027

PARCEL SIX:
PARCEL SIX-A:

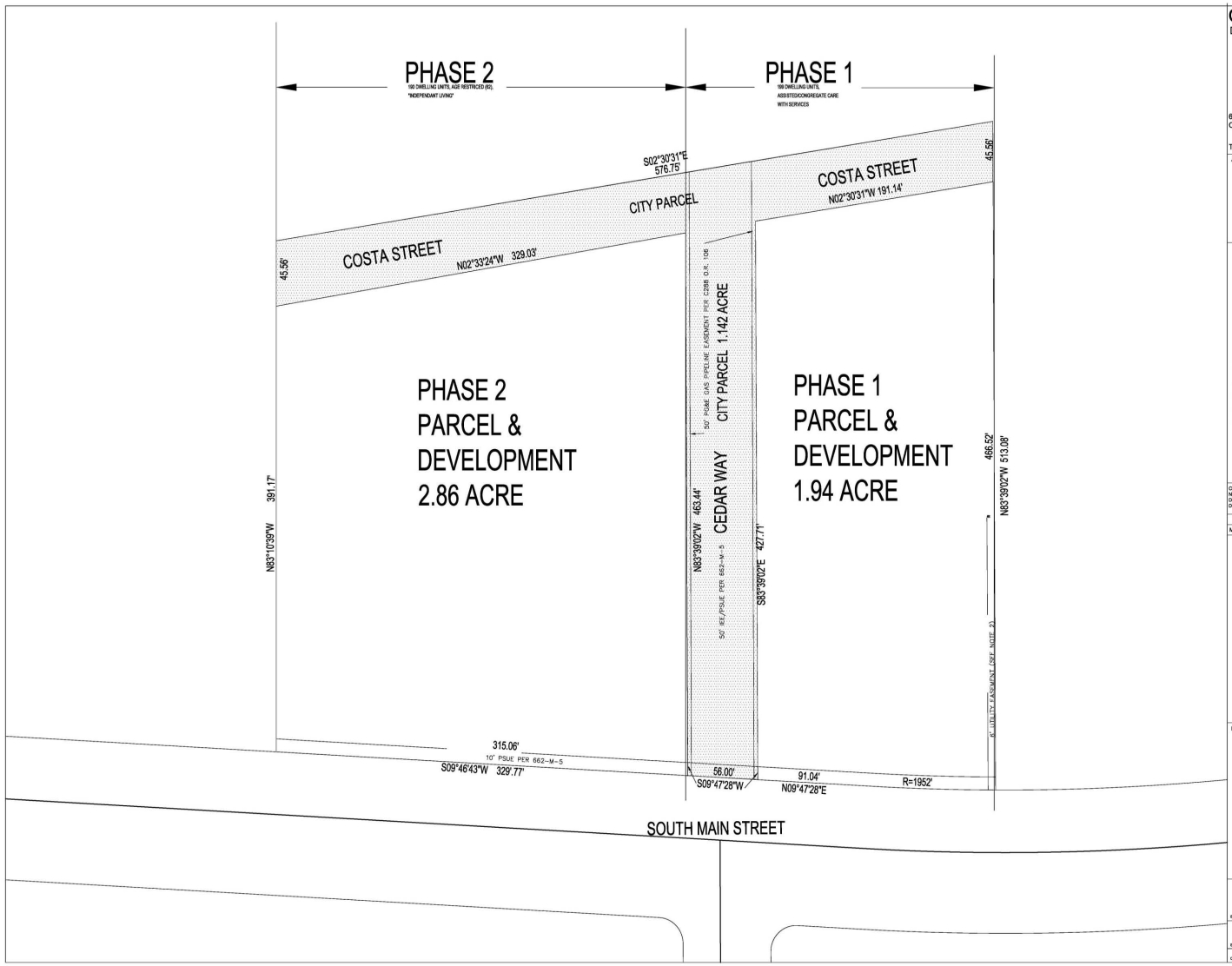
PORTION OF THE MILPITAS RANCH DESCRIBED AS FOLLOWS:

BEGINNING ON THE EASTERLY LINE OF MAIN STREET, ALSO KNOWN AS THE STATE HIGHWAY LEADING FROM SAN JOSE TO MILPITAS, DISTANT THEREON SOUTH 8° 38′ 30″ 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 CONTINUIJNG ALONG SAID LINE OF MAIN STREET ALONG A TANGENT CURVE TO THE RIGHT, WITH A RADIUS OF 2033 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 215.31 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 SIX-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, DOCUMENT NO. 7031783 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 LINEALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 27' 13" HAVING A RADIUS OF 2033 FEET AN ARC LENGTH OF 1610 FEET; THENCE ALONG THE NORTHWESERLY 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.

APN: 086-22-028



COLLABORATIVE DESIGN ARCHITECTS INC

Oakland, CA

6114 LaSalle Avenue
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PMB 465
California 94611-2802

TEL 510 339-8880 FAX 510 339-1642

ARCHITECT'S STAMP | CONSULTANT'S STAMP

Project Description:

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

AMENDED & RESTATED DISPOSITION & DEVELOPMENT AGREEMENT

Owner / Applicant:

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SUBMITTALS / REVISIONS

MARK	DESCRIPTION	DATE
	AMENDED & RESTATED DDA	11-19-13

KEY PLAN: NTS

ILLUSTRATIVE "PLAT MAP" SUBJECT TO FINAL MAP

SHEET DESCRIPTION

SCALE: AS NOTED

DRWN: JRB
APPROVD: ZB003
CDA PROJECT NO.

CDA FILE PATH:

SHEET NO.

A-1

675\02\1422053.2

EXHIBIT A-1

LEGAL DESCRIPTION OF PHASE ONE PARCEL

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.5.2.]

EXHIBIT A-2

LEGAL DESCRIPTION OF PHASE TWO PARCEL

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.5.2.]

EXHIBIT A-3

LEGAL DESCRIPTION OF PUBLIC USE PARCELS

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.5.2.]

EXHIBIT B

SCOPE OF DEVELOPMENT—PROJECT DESCRIPTION

This Exhibit B sets forth the proposed Scope of Development and project description for the Project. Attachment 1 to this Exhibit B provides a general depiction of the proposed Project described below, including 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, 046, 047, and 048) on the east side at its intersection of Cedar Way (see Attachment 1). 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 buildings. 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 Continuum of Care Retirement Community providing a total of 389 units of mixed income, age restricted (62 years of age and older) rental senior housing. There are 199 units of congregate care and assisted living senior units in the Phase One Development on the Phase One Parcel (approximately 1.94 net developable acres), and 190 units of independent living senior housing in the Phase Two Development on the Phase Two Parcel (approximately 2.86 net developable acres). Three hundred fifty-six (356) units are allowed in "R-4-TOD-S." With 12.34% of the units restricted to occupancy by very low income households (whose income does not exceed 50% of the Area Median Income) for 55 years, the Project qualifies for a 35% density bonus, bringing the total number of units allowed on the site to 480 units. The Project's total of 389 units falls well below this cap.

1. Phase One Development.

(a) Overview.

The Phase One Development will consist of 199 units of rental "Continuum of Care Senior Housing," including 10 Affordable Units for very low income-qualified households (50% AMI) and 189 units at "Fair Market" unrestricted rental rates. The Phase One Development will be

located on the southern portion of the Property on the approximately 1.94 net developable acres Phase One Parcel. The Phase One Development will provide congregate care and assisted living services, and a full range of amenities, to the residents. The design construction standards for the project will be Type 1B and the units will be designed to be handicapped accessible enabling residents to age in place. The Phase One Development will be a "podium" design with the habitable structure located on a subterranean Type IA garage structure.

The building will provide approximately 221,542 habitable square feet, including 63,200 square feet for common areas and 158,342 gross square feet for resident units integrated around exterior courtyards, plus a 67,228 square foot subterranean parking structure. Superior junior one-bedroom, one-bedroom 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 anticipated unit mix and sizes of the senior apartment units in the Phase One Development will be as follows:

Unit Type	# of Units	%	Net Rentable Sq. Ft.
Jr. 1 bedroom*	3	2%	500
Jr. 1 bedroom	8	5%	500
Jr. 1 bedroom	6	3%	601
1 bedroom	4	2%	642
1 bedroom	6	3%	670
1 bedroom	48	24%	701
1 bedroom	16	8%	726
1 bedroom	26	13%	737
1 bedroom	25	13%	744
2 bedroom	57	29%	1,046
Total	**199**	**100%**	**158,342**

*As defined in the Phase One Regulatory Agreement.

The ten units restricted to occupancy by very low income senior households will be of the junior one-bedroom (8 units) and one-bedroom (2 units) unit types.

(b) <u>The Phase One Development will be a single structure in an "H" configuration</u>:

(i) The configuration allows three distinctive exterior courtyards allowing use by both residents and members of the community and 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 and bistro areas. The center courtyard will have a swimming pool and outdoor spa 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 allow grass while maintaining and allowing a drivable surface for emergency vehicles.

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

(i) The subterranean parking garage (67,228 sf) area will have approximately 150 parking spaces, plus resident storage, mechanical support areas and a commercial laundry service for the complex. The parking will be accessed from Costas Street. The level of parking provided has been determined by historical data of projects of similar occupancy mix. It is anticipated that initial resident occupancy will be 65% congregate and 35% assisted living. As residents age in place this ratio is expected to reach 50% - 50%. The parking requirement for the proposed senior project is less than family housing, due to the age and non-ambulatory status of many residents. The parking provided in the garage is based on 0.7 parking space per congregate unit (130 DU at initial resident occupancy) or 91 parking spaces, plus staff parking of 40 spaces equating to 131 spaces. The balance of 19 spaces in the subterranean garage is allocated for visitor parking. No parking is provided for assisted living residents who are no longer capable of driving. There is additional visitor parking along Costas Street and Cedar Way.

(ii) The first floor main entry will have a "Porte Cochere" accessible from Cedar Way located outside the public-right-of way (which public right-of-way will be subject to refinement during the Entitlements process), allowing residents and visitors to have a protected vehicular drop off and "queing area" for resident activities and van pick up. As one enters the building, a vast lobby will have a "Reception Desk" and a "Concierge Station." An expanse of glass will open unto the main courtyard with a water feature center piece. A "Bistro" style café, gaming and activity areas, a library and the main dining area will be on the first floor East Wing. The kitchen, support areas, pick-up and deliveries and garbage pick-up will be off of Costas Street (East Wing). Administrative areas and an elevator core will be in the center of the building. Residential areas will comprise all of the West Wing of the first floor.

(iii) Floors 2 through 4 will be all residential units with the required support areas. A total of three elevators will be provided enabling resident and staff access from the parking structure to all floors in the building.

(iv) The Phase One Development will be 4 stories of steel frame construction (Type IB Construction) above a reinforced concrete (Type IA 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.

(d) Public Improvements Associated with Phase One Development:

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

(i) On-Site.

- Construction and public dedication of Cedar Way (56' ROW) from S. Main Street to Costas Street.
- Construction and public dedication of Costas Street (anticipated 44' ROW) from the southern boundary of the property (Aspen Villages) to northern curb return of Cedar Way.
- Storm drain, C.3 stormwater treatment measures, sanitary sewer, water line, and joint utility trench within Cedar Way and the Phase One portion of Costas Street.
- 12' sound wall along eastern property boundary adjacent to railroad.
- All weather emergency access easement (EVA) (20' width) and improved pedestrian connection along the southern property boundary of the Phase One Development.

(ii) Off-Site.

- South Main Street frontage improvements including:
  - Curb, gutter, sidewalk removal and replacement;
  - Repair failed pavement and 2" AC overlay of Main Street frontage including signage and striping per S. Main Street plan line;
  - Connection of utilities to existing services (storm, water, irrigation, sanitary sewer, dry utilities);

- Streetlights, tree wells, street trees, irrigation, street furniture, and fire hydrants per S. Main Street plan line from Mihalakis Street north to South Abel Drive;
- New bus turnout and bus stop shelter (Phase Two Development frontage);
- New raised median installation including lights, landscaping and irrigation per S. Main Street plan line from Cedar Way north to South Abel Drive.

o Modification and upgrade of the existing traffic signal at S. Main Street and Cedar Way intersection per Midtown Specific Plan and South Main Street Plan line.

o Replacement of The Pines sound wall on the east side of S. Main Street along the entire frontage of The Pines between the southerly limits of Jerry's Market to Cedar Way and from Cedar Way to the northerly limits of the adjacent parcel to the south.

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

The facility will accommodate a range of seniors, from those who are healthy and active (Congregate Living residents) to those who are more frail (Assisted Living residents).

(i) Congregate Living - For residents who are ambulatory or semi-ambulatory, alert, and physically and mentally capable of independent management of daily activities.

(ii) Assisted Living - For ambulatory or semi-ambulatory residents who need limited and higher levels of assistance with daily living activities such as medications, grooming, mobility and other personal care and services. This program is designed to enable continued residency in the retirement community as residents age. No dementia, Alzheimer's or skilled nursing care will be offered at the Phase One Development.

This "continuum of care" approach allows residents to age within a home environment minimizing the discomfort of multiple moves. The facility will have a full service dining room, a "Bistro" dining option, a fitness center and indoor pool, a recreation center, a hair salon, an outdoor recreational area and a number of other amenities. The "lifestyle" created for the residents includes restaurant-style dining, housekeeping, scheduled transportation on the community shuttle bus, 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 vitality 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.

2. Phase Two Development.

(a) Overview.

The Phase Two Development will consist of 190 mixed income, age restricted (62 years of age and older), rental housing units for active, independent living seniors. The Phase Two Development will be located on the northern portion of the Property on the approximately 2.86 net developable acre Phase Two Parcel. The Phase Two Development residential structure will provide approximately 207,000 square feet of habitable area, including 41,000 square feet of common area and 166,000 square feet for the residential units. A four-story, 101,000 square foot, above grade parking structure will provide approximately 252 parking spaces (1.33 spaces/unit) for resident use. While less parking than a general market apartment project (1.7 spaces/unit), senior residents typically have only one car per unit.

The anticipated unit mix and sizes of the Phase Two Development senior independent living housing units will be as follows:

Unit Type	# of Units	%	Sq. Ft.
Jr. 1 bedroom*	28	15%	600
1 bedroom	44	23%	700
1 bed deluxe	44	23%	850
2 bed/2bath	32	17%	1,025
2 bed/2 bath deluxe	42	22%	1,150
	190	**100%**	**166,100**

*As defined in the Phase Two Regulatory Agreement.

The Phase Two Development will provide twenty-eight (28) affordable junior one-bedroom units for very low income senior households (50% AMI) and ten (10) affordable one-bedroom units for very low income senior households (50% AMI).

(b) The Phase Two Development will be three structures (see Site Development Plan attached):

(i) There will be two habitable Type V wood frame structures in the project totaling approximately 207,000 gross square feet. The four-story, 202,000 square foot residential community/building,

including approximately 37,000 square feet of common areas, will accommodate the 190 residential units in 166,000 habitable square feet (874 square feet / unit average). There will be an approximately 5,000 square foot, two-story administration and resident recreation building at the southwest corner of the property. The third structure will be the 101,000 square foot, Type IA, four-story above grade parking structure. The residential units will be located in wings off the parking structure with the wings separated by landscaped courtyards. The majority of units will have private exterior balconies.

(ii) The four-story, above grade parking structure will provide approximately 252 parking spaces, miscellaneous resident storage and mechanical support areas. The parking will be accessed via Costas Street to the northerly east-west emergency vehicle access easement between Costas and South Main streets.

(iii) The Community Center/Business Center, a two-story, 5,000 square foot structure will front onto Cedar Way. The structure will be a wood frame (Type V, A Construction), stucco exterior with detailing and color integrated into the overall complex. It will provide administrative offices, a resident gym, resident recreation and meeting areas and a visitor center.

The overall Phase Two Development design will be based on the "Texas Wrap" design concept, and will complement the design of the Phase One Development.

(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 Attachment No. 1):

(i) On-Site.

- Construction of Costas Street from the northern Cedar Way curb return to the northern property line (which may be a private street at City's discretion).
- Construction and public dedication of a twenty (20) foot east/west street EVA from S. Main Street to Costas Street.
- Storm drain, sanitary sewer, water line, landscaping, irrigation, lights and joint utility trench within the Phase Two portion of Costas Street and the EVA.

(ii) Off-Site.

- Street conforms and associated signing and striping revisions associated with the connection of the EVA intersection with S. Main Street.

3. Proposed Revisions to Current Entitlements.

Following is a summary of some key features of the proposed Project that represent differences and changes from the previous project that had been entitled for the Property under a prior set of entitlements granted by City Council Resolution No. 08-004 of February 5, 2008. As detailed in Recital J and Section 1.3.5.1 of the Agreement, the Developer will be seeking a new set of Entitlements for the proposed Project that will be subject to Planning Commission and City Council review and approval in accordance with all required local procedures.

(a) Use:

The use would be changed to the housing description described in this Exhibit B, from the previously 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.

(b) Site Utilization/Circulation:

The proposed Project requires the following modifications to site circulation from that shown in the previous entitlements:

(i) Diaz Street would be removed.

(ii) Access road right of way on the north of the Property would be reduced to a twenty (20) foot emergency vehicle access easement from the current 37' proposed public street right of way with the intent that the adjacent parcel to the north would have an additional thirty-six (36) foot public right of way condition at the time that parcel is developed, thus completing a total of a fifty-six (56) foot public street right of way.

(iii) An emergency access easement (EVA) and pedestrian connection of 20' width would be recorded and improved with a driving landscape surface acceptable to the Fire Department along the south property line of the Phase One Parcel (with all required fire and emergency access criteria). Final design of the EVA and pedestrian connection is subject to review and approval of the Planning Department.

(iv) A 12' decorative sound wall will be installed along the eastern property boundary adjacent to the railroad in lieu of an 8' sound wall required under the current entitlements

(c) Density Bonus:

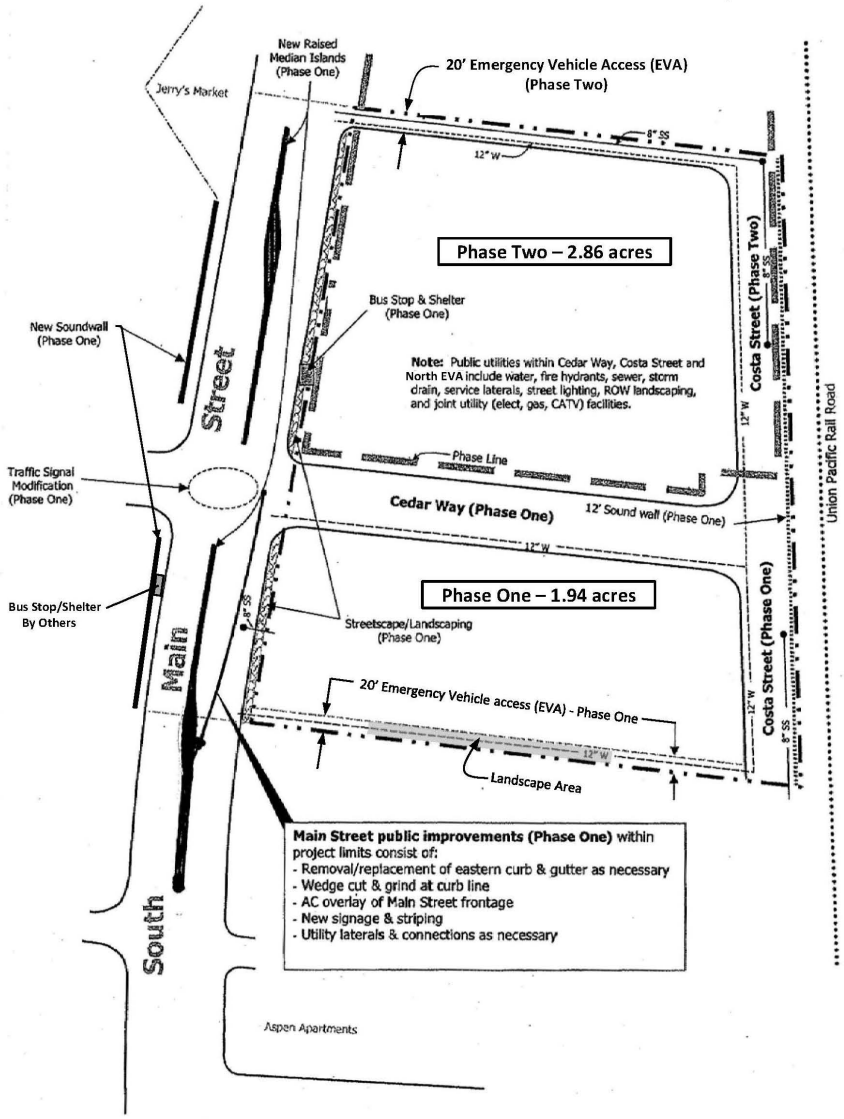
A density bonus will be sought for the proposed Project that differs from Density Bonus No. DB2008-0001 that had previously applied to the Property as follows:

(i) A density bonus of 33 units would be provided in exchange for the Project's provision of 48 units for very low income (50% AMI) senior households, and three (3) incentives or concessions would be granted that result in identifiable, financially sufficient and actual cost reductions for the Project.

(ii) A transfer of affordability rights from the developer of the Aspen Apartment project will not be required due to the proposed Project's inclusion of affordability as described above and earlier in this Exhibit B.

(iii) The obligation under the previous entitlements to provide the Aspen Apartment project approximately One Million Dollars ($1,000,000.00) would not apply as an "obligation" of the proposed Project due to the inclusion of the 48 Affordable Units in the Project.

EXHIBIT B Attachment 1



South Main Senior Lifestyle Project

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EXHIBIT C

[INTENTIONALLY OMITTED]

EXHIBIT D

SCHEDULE 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 10.2 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 Housing Authority 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 Housing Authority 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 10.20 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/Status
A. General Conditions			
1		Amendment Effective Date.	Assumed 11/19/2013. Other specific calendar dates below are premised on this assumed Amendment Effective Date.
2	1.3.4	Scope of Development approved by Housing Authority.	Completed 11/19/2013.
3	1.7	Execution and recordation of Memorandum of Agreement.	Promptly following the Amendment Effective Date upon date mutually chosen by parties.
4	3.3	Open escrow for conveyance of Property.	Prior to Closing for the Property.
5	1.3.5.1	Developer submits application for Revised Entitlements.	7 months prior to anticipated Closing Date.
6	1.3.5.1	City in its discretion approves Revised	Prior to Closing.

	Section Reference	Action	Due Date/Status
		Entitlements.	
B. <u>Phase One Development</u>			
1.	1.3.1	Developer submits Financing Plan.	Within 60 days after receipt of lender commitment for construction and permanent financing.
2.	1.3.1	Housing Authority approves Financing Plan.	Within 30 days after receipt from Developer.
3.	1.3.3	Developer submits evidence that construction funds are available, all permits and approvals ready to be issued.	Prior to Closing.
4.	1.3.5	Developer obtains all approvals for Phase One Development, including CEQA review.	Prior to Closing.
5.	1.4.1	Developer submits Operator and Operating Agreement.	Not less than 60 days prior to anticipated Closing Date.
6.	1.4.1	Housing Authority approves Operator and Operating Agreement.	Within 30 business days after receipt from Developer.
7.	1.4.2	Developer submits Services Plan.	Not less than 60 days prior to anticipated Closing Date.
8.	1.4.2	Housing Authority approves Services Plan.	Within 30 business days after receipt from Developer.
9.	5.3	Developer submits Construction Plans including final drawings, plans, and specifications to City Building Department.	Within 90 days after lender commitment for construction and permanent financing.
10.	5.4	Developer applies for building permits.	Within 30 days after City approval of Construction Plans.
11.	1.3.5.3	Developer payment for permits and fees.	As required by City.
12.	5.10.1	Developer delivers copies of performance and payment bonds.	Prior to Closing.

	Section Reference	Action	Due Date/Status
13.	5.11, 1.6	Developer provides evidence of insurance, endorsement naming Housing Authority and City as additional insureds; copies of policies.	Prior to Closing.
14.	1.5	Execution and recordation of Phase One Regulatory Agreement and Phase Two Regulatory Agreement.	At Closing.
15.	1.3.5.1	Housing Authority records Final Map against Property, and Developer posts necessary public improvement bonds in connection therewith.	60 days prior to Closing.
16.	3.6	Closing. All conditions to Closing satisfied or waived.	By not later than Closing Deadline (24 months after Amendment Effective Date, or later agreed date). Based on an assumed 11/19/13 Amendment Effective Date, the Closing Deadline is currently 11/19/15.
17.	5.1	Commencement of Construction.	By the earlier of (a) 30 days after the Closing Date, or (b) 12/19/15.
18.	5.1	Completion of Construction.	By the earlier of (a) 24 months after commencement of construction, or (b) 12/19/17.
19.	5.12	Housing Authority issues Certificate of Completion.	Promptly following completion of construction and City issuance of Certificate of Occupancy.
C. <u>Phase Two Development</u>			
1.	1.3.1	Developer submits Financing Plan.	Within 60 days of receipt of California Debt Limit Allocation Committee bond allocation for Phase Two Tax-Exempt Bonds or lender commitment for conventional financing.
2.	1.3.1	Housing Authority approves Financing Plan.	Within 30 days after receipt from Developer.

	Section Reference	Action	Due Date/Status
3.	1.3.3	Developer submits evidence that construction funds are available, all permits and approvals ready to be issued.	Prior to commencement of construction.
4.	1.3.5	Developer obtains all approvals for Phase Two Development, including CEQA review.	Prior to commencement of construction.
5.	5.3	Developer submits Construction Plans including final drawings, plans, and specifications to City Building Department.	Not less than 7 months prior to anticipated commencement of construction.
6.	5.4	Developer applies for building permits.	Within 30 days after City approval of Construction Plans.
7.	1.3.5.3	Developer payment for permits and fees.	As required by City.
8.	5.10.1	Developer delivers copies of performance and payment bonds.	Prior to commencement of construction.
9.	5.11, 1.6	Developer provides evidence of insurance, endorsement naming Housing Authority and City as additional insureds; copies of policies.	Prior to commencement of construction.
10.	5.1	Commencement of Construction.	Unless a later date is agreed upon, by the earlier of (a) 24 months after issuance of Certificate of Completion for Phase One Development, or (b) 12/19/19.
11.	5.1	Completion of Construction.	By the earlier of (a) 24 months after the commencement of construction, or (b) 12/19/21.
12.	5.12	Housing Authority issues Certificate of Completion.	Promptly following completion of construction and City issuance of Certificate of Occupancy for 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

Recording Requested by
and when Recorded, return to:

City of Milpitas Housing Authority
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 City of Milpitas Housing Authority, a public body, corporate and politic (the "**Grantor**"), hereby grants and conveys to South Main Senior Lifestyle, LLC, a California limited liability company (the "**Grantee**"), the real property (the "**Property**") described in Exhibit A attached hereto and incorporated in this grant deed ("**Grant Deed"**) by this reference.

1. The Property is conveyed subject to that certain Amended and Restated Disposition and Development Agreement entered into by and between the Grantor and the Grantee dated as of November 19, 2013 (the "**DDA**"). The Grantor and the Grantee have executed a Memorandum of Disposition and Development Agreement dated as of November 19, 2013 (the "**Memorandum**") which shall be recorded in the Official Records of Santa Clara County ("**Official Records**") substantially concurrently herewith.

2. Pursuant to the DDA, the Property has been subdivided into various parcels, including:

(a) An approximately 1.94 acre parcel (the "**Phase One Parcel**") upon which a seniors "continuum of care" residential rental development (the "**Phase One Development**") will be constructed and operated, and which is the subject of the Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Phase One Regulatory Agreement**"); and

(b) An approximately 2.86 acre parcel (the "**Phase Two Parcel**") upon which a seniors "independent living" residential rental development (the "**Phase Two Development**") will be constructed and operated, and which is the subject of the Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Phase Two Regulatory Agreement**").

The Property is further conveyed subject to certain title conditions, including without limitation the Phase One Regulatory Agreement and the Phase Two Regulatory Agreement (collectively, the **"Regulatory Agreements**"). The Regulatory Agreements shall be recorded substantially concurrently herewith.

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

4. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter until the expiration of the term of the Phase One Regulatory Agreement with respect to the Phase One Development, and the expiration of the term of the Phase Two Regulatory Agreement with respect to the Phase Two Development, the Grantee shall devote the Property, the Phase One Development, and the Phase Two Development thereon only to the uses specified in the DDA and the respective Regulatory Agreements.

5. 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 Property, the Phase One Development, and the Phase Two Development in compliance with all requirements for operation and maintenance set forth in the DDA and the respective Regulatory Agreements.

6. 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 Property, the Phase One Development and the Phase Two 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 Property, the Phase One Development, and the Phase Two Development.

All deeds, leases or contracts made relative to the Property 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)."

7. The Grantee covenants, represents and agrees that the Property, the Phase One Development, and the Phase Two 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 Property 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 Property to the general welfare of the community, the financial and other assistance provided by Grantor to facilitate development of the Property, and the reliance by Grantor upon the unique qualifications and ability of the Grantee to serve as the catalyst for development of the Property. 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 Property, the Phase One Development, or the Phase Two Development thereon or any part thereof, or of any ownership interest in the Grantee in violation of the DDA or the Phase One Regulatory Agreement with respect to the Phase One Parcel and Phase One Development, or the Phase Two Development with respect to the Phase Two Parcel and the Phase Two Development. 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.

8. The covenants contained in Sections 3 regarding construction shall remain in effect until the issuance pursuant to the DDA of a Phase One Certificate of Completion with respect to the Phase One Development, and the Phase Two Certificate of Completion with respect to the Phase Two Development. The covenants in Section 4 and 5 regarding use, operation and maintenance and Section 7 regarding prohibited sales, transfers, assignments, conveyances, leases, pledges and encumbrances shall remain in effect for the life of the Phase One Regulatory Agreement with respect to the Phase One Parcel and the Phase One Development, and the life of the Phase Two Regulatory Agreement with respect to the Phase Two Parcel and the Phase Two Development. The covenants against discrimination contained in Section 6 shall remain in effect in perpetuity.

9. 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 Property, the Phase One Development, or the Phase Two Development, as applicable, 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.

10. The covenants contained in Sections 3, 4, 5, 6 and 7 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 Property, the Phase One Development, and the Phase Two 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.

11. Subject to and in accordance with the procedures and provisions of Section 9.6.1 of the DDA, the Grantor shall have the right, at its option, to re-enter and take possession of the Property, or portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.6.1 of the DDA.

12. Subject to and in accordance with the procedures and provisions of Section 9.6.2 of the DDA, the Grantor shall have the right, at its option, to repurchase and take possession of the Property, or portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.6.2 of the DDA.

13. Subject to and in accordance with the procedures and provisions of Section 9.7.1 of the DDA, the Grantor shall have the right, at its option, to repurchase and take possession of the Phase Two Parcel, or portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.7.1 of the DDA.

14. Subject to and in accordance with the procedures and provisions of Section 9.7.2 of the DDA, the Grantor shall have the right, at its option, to re-enter and take possession of the Phase Two Parcel, or portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.7.2 of the DDA.

15. Subject to and in accordance with the procedures and provisions of Section 9.7.3 of the DDA, the Grantor shall have the right, at its option, to repurchase and take possession of the Phase Two Parcel, or portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.7.3 of the DDA.

16. The Grantor shall have the right to institute such actions or proceedings as it may deem desirable to effectuate the purposes of Sections 11, 12, 13, 14, and 15 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.

17. 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 Property, the Phase One Development, or the Phase Two Development, as applicable, 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 Property, the Phase One Development, or the Phase Two Development, as applicable, 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 Property, the Phase One Development, or the Phase Two Development, as applicable, 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 Property, the Phase One Development, or the Phase Two Development, as applicable.

18. 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.

19. 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 __ day of _____, 201_.

GRANTOR:

THE CITY OF MILPITAS HOUSING AUTHORITY,
a public body, corporate and politic

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Secretary

APPROVED AS TO FORM:

By: _____
Counsel

SIGNATURES CONTINUE ON FOLLOWING PAGE

GRANTEE:

SOUTH MAIN SENIOR LIFESTYLES, LLC
a California limited liability company

By: _____
Joseph W. Callahan, Jr.
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

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 G

FORM OF MEMORANDUM OF
DISPOSITION AND DEVELOPMENT AGREEMENT

Recording Requested by
and when Recorded, return to:

City of Milpitas Housing Authority
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 November 19, 2013, is entered into by and between the City of Milpitas Housing Authority, a public body, corporate and politic ("**Housing Authority**"), and South Main Senior Lifestyle, LLC, a California limited liability company ("**Developer**").

1. For the purposes fully set forth therein, Housing Authority and Developer have entered into that certain Amended and Restated Disposition and Development Agreement, dated as of the date hereof (the "**DDA**"), pursuant to which Housing Authority has agreed to convey to Developer and Developer has agreed to develop certain real property (the "**Property**") located at 1504-1620 South Main Street, Milpitas, California, 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 seniors 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 ninety-nine (199) unit continuum of care senior housing residential rental development, including ten (10) 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 one hundred ninety (190) unit independent living senior housing residential rental development, including thirty-eight (38) affordable rental units, as fully set forth in the Phase Two Regulatory Agreement to be recorded in the Official Records of Santa Clara County substantially concurrently herewith.

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 Housing Authority; 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, the Phase One Regulatory Agreement, and the Phase Two Regulatory Agreement, as applicable.

4. Developer and Housing Authority 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), the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel only), and the respective rights of Developer and Housing Authority thereunder, including without limitation, the Housing Authority's reversionary interests in the Property in its entirety or the Phase Two Parcel only, as applicable, in the event of certain defaults under the DDA. Copies of the unrecorded DDA are available at the offices of the Housing Authority, 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 Housing Authority and their respective successors and assigns.

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

HOUSING AUTHORITY:

HOUSING AUTHORITY OF THE
CITY OF MILPITAS, a public body, corporate and politic

By: _____

Name: _____

Its: _____

Attest:

_____
Housing Authority Secretary

Approved as to Form:

_____
Housing Authority Counsel

SIGNATURES CONTINUE ON FOLLOWING PAGE

DEVELOPER:

SOUTH MAIN SENIOR LIFESTYLES, LLC
a California limited liability company

By: _____
Joseph W. Callahan, Jr.
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

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-1

FORM OF PHASE ONE REGULATORY AGREEMENT

Recording requested by and when recorded mail to:

City of Milpitas Housing Authority
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.)

PHASE ONE

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF MILPITAS HOUSING AUTHORITY

and

SOUTH MAIN SENIOR LIFESTYLES, LLC

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

RECITALS

A. Owner has purchased an approximately 5.94 acre parcel of real property from the Housing Authority located at 1504-1620 South Main Street, Milpitas (the "**Property**") pursuant to the terms of an Amended and Restated Disposition and Development Agreement dated as of November 19, 2013 by and between the Housing Authority and Owner (the "**DDA**"), a memorandum of which has been recorded substantially concurrently herewith in the Official Records of Santa Clara County.

B. The Property was purchased by the former Redevelopment Agency of the City of Milpitas (the "**Former RDA**") using funds from its Low and Moderate Income Housing Fund (the "**Housing Fund**") in accordance with the requirements of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "**CRL**"). Upon dissolution of the Former RDA pursuant to ABx1 26 (as amended by AB 1484, the "**Redevelopment Dissolution Law**") as of February 1, 2012, the Housing Authority was designated to perform the housing functions and administer the housing assets of the Former RDA, which housing assets include the Property, as more fully described in the recitals of the DDA. In accordance with the DDA and the requirements imposed upon the Housing Authority pursuant to the Redevelopment Dissolution Law and the CRL, the Housing Authority has required that specified units of affordable housing be developed and operated by Owner on the Property.

C. In accordance with the DDA, the Property has been subdivided into various parcels, including the parcel of real property more particularly described in Exhibit A attached hereto (the "**Phase One Parcel**").

D. Also in accordance with the DDA, Owner intends to construct, own and operate on the Phase One Parcel a one hundred ninety-nine (199)-unit "continuum of care" senior housing rental development (the "**Phase One Development**"), including specified units for very low-income households as set forth in this Agreement. The Phase One Development will provide congregate care or assisted living services to its residents, as appropriate for each resident. Care for Alzheimer's and dementia, and skilled nursing care, will not be available.

E. Specifically, the DDA and this Agreement provide that ten (10) of the residential units in the Phase One Development shall be affordable to and occupied by or available for occupancy by very low-income senior households for a period of not less than fifty-five (55) years.

F. Pursuant to the DDA, and to facilitate the financially feasible provision of the units of affordable housing as set forth in this Agreement, the Housing Authority agreed to

convey the Phase One Parcel to Owner for its "fair reuse value" of One Dollar ($1.00), as authorized by the CRL to facilitate such affordability (the "**Affordable Housing Facilitated Purchase Price**").

G. In recognition that the Property, including the Phase One Parcel, was purchased by the Former RDA with Housing Funds, and as a condition to its agreement to convey the Phase One Parcel to Owner at the Affordable Housing Facilitated Purchase Price, the Housing Authority requires the Phase One Parcel to be subject to the conditions, restrictions, reservations and rights of the Housing Authority set forth herein.

H. 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 Housing Authority 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.

"Assisted Living Supportive Services Fees" means the total of monthly payments by the tenants of a Restricted Unit for the following assisted living supportive services: three(3) meals daily; scheduled transportation on the community shuttle bus; weekly housekeeping; social, cultural, physical fitness and educational programs; twenty-four (24) hour emergency system monitoring; and assistance with activities of daily living such as medications, bathing, dressing, mobility needs and other health care and personal care needs.

"Assumed Household Size" means one (1) person for each studio apartment unit (including each Junior One Bedroom Unit) that is a Restricted Unit, and means two (2) persons for each One Bedroom Unit that is a Restricted Unit.

"Congregate Care Supportive Services Fee" means the total monthly payment by the tenants of a Restricted Unit for the following congregate care supportive services: two (2) meals daily; scheduled transportation on the community shuttle bus; weekly housekeeping; social, cultural, physical fitness and educational programs; and twenty-four (24) hour emergency system monitoring.

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

"**Junior One Bedroom Unit**" means a unit in the Phase One Development containing less than 625 net rentable square feet.

"**One Bedroom Unit**" means a one bedroom unit in the Phase One Development containing 625 or more rentable square feet.

"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, except as otherwise provided in the following sentence; the cost of electricity, gas, water and sewer, and garbage collection, which shall be paid by Owner; and 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. "Rent" shall not include cable and telephone service (which shall be paid by tenants), Congregate Care Supportive Services Fees and Assisted Living Supportive Services Fees, and security deposits.

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

"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.

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 ninety-nine (199)-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 Housing Authority. 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 ninety-nine (199) of the dwelling units in the Phase One Development shall be restricted for occupancy by households in which each household 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, ten (10) 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 Occupancy of Restricted Units. The Restricted Units shall be occupied (or if vacant, available for occupancy) as follows:

(a) Eight (8) of the Junior One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households, each of whose members receive congregate care or assisted living supportive services provided by the Phase One Development; and

(b) Two (2) of the One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households, each of whose members receive congregate care or assisted living supportive services provided by the Phase One Development.

2.4. Rents for Restricted Units. Rents for the Restricted Units shall be limited to Rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size (the **"Qualifying Rent"**).

2.5. Increased Income of Households. In the event that recertification of an Eligible Household's income indicates that the household's Adjusted Income exceeds one hundred twenty percent (120%) of the qualifying income for a Very Low-Income Household, then (a) such household's dwelling unit shall still be considered a Restricted Unit, (b) the Qualifying Rent for such unit shall remain at one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size, and (c) Owner shall rent the next available dwelling unit of the applicable unit size and type (i.e., a Junior One Bedroom Unit if the applicable over-income household is occupying a Junior One Bedroom Unit, or a One Bedroom Unit if the applicable over-income household is occupying a One Bedroom Unit) to an Eligible Household to comply with the requirement of Section 2.3. Once the next available unit has been rented to an Eligible Household in accordance with clause (c) above, the Rent for the over-income household may be increased to market rate rent.

2.6. Unit Sizes, Design and Preferences. The Restricted Units shall consist of Junior One Bedroom Units and One Bedroom Units. Each member of an Eligible Household occupying a Restricted Unit shall receive congregate care or assisted living supportive services provided by the Phase One Development for a fee in addition to the Qualifying Rent. 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) <u>In Leases</u>:

"(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) <u>In Contracts</u>.

"(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 Housing Authority 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 Housing Authority's request, shall make the originals available for inspection by Housing Authority and shall provide copies of such certificates to Housing Authority.

3.2. Annual Report; Inspections. Owner shall submit an annual report ("**Annual Report**") to Housing Authority in form satisfactory to Housing Authority, 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 Housing Authority'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 Housing Authority 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 Housing Authority; 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 Housing Authority with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Housing Authority 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 Housing Authority 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 Housing Authority 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 Housing Authority, 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 Housing Authority 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 Housing Authority.

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 Housing Authority may otherwise agree in writing, Housing Authority shall have no responsibility for management or maintenance of the Phase One Parcel or the Phase One Development.

6.2. Management Entity. Housing Authority 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 1.4.1 of the DDA. The Housing Authority 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 tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the 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. Housing Authority's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and Owner fails, within ten (10) days after written notice from Housing Authority (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from Housing Authority (with respect to landscaping, building improvements and general maintenance), to cure or commence to cure and thereafter diligently pursue to completion the cure of such default then Housing Authority, 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 Housing Authority in connection with the foregoing, shall constitute an indebtedness, and shall be paid by Owner to Housing Authority upon demand. All such sums remaining unpaid thirty (30) days following delivery of Housing Authority'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 Housing Authority 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 1.4.2 of the DDA. As of the Effective Date, Housing Authority 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 Housing Authority review and approval, a plan for marketing and managing the Restricted Units in 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 selection criteria for Eligible Households, 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 the division of responsibilities between the Owner and the Operator in the management and maintenance of 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 Eligible Households. 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 Housing Authority for its review and approval.

6.5. Approvals. If Housing Authority 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 Housing Authority's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Housing Authority.

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 a building permit 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 equity 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 Housing Authority of proof of insurance for

the Phase One Development, (ii) naming of Housing Authority and the City of Milpitas as additional insureds, and (iii) provision to Housing Authority 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 equity 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 Housing Authority Documents (as defined in the DDA) and easements of record, absent the written consent of Housing Authority, 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 Housing Authority, 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 Housing Authority may reasonably request. Notwithstanding the foregoing, Housing Authority 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 of the DDA).

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 Housing Authority; provided however, that none of the following Transfers shall require Housing Authority consent and each of the following Transfers shall be permitted: (a) a Transfer by Owner to a limited partnership, limited liability company, or other joint venture entity (collectively, **"Joint Venture Entity"**) in which Owner is the managing general partner, managing member, or other managing entity of the Joint Venture Entity, which Transfer is undertaken (1) for purposes of creating an ownership structure to obtain equity for development of the Phase One Development consistent with the Financing Plan approved by Housing Authority pursuant to Section 1.3.1 of the DDA, or (2) for purposes of providing an ownership interest in Owner to an Operator (or affiliate of the Operator) approved pursuant to Section 1.4.1 of the DDA; (b) the admission of an equity investor or an approved Operator (or an affiliate of an approved Operator) to such Joint Venture

Entity; and/or (c) the transfer by the investor to an entity in which an affiliate is the general partner or managing member.

8.2. Permitted Transfers. In addition to Transfers otherwise permitted pursuant to the DDA and Section 8.1 above, the Housing Authority shall not withhold, delay or condition its consent to the following Transfers: (i) a transfer from the Joint Venture Entity to an entity which is controlled by or is under common control with the Joint Venture Entity's managing general partner (a **"Controlled Affiliate"**); (ii) a transfer of the initial equity investor's interest into an investor limited partner or partners, or subsequent transfers of such interests by the equity investor(s); (iii) a transfer from an equity investor to the Joint Venture Entity's managing general partner or a Controlled Affiliate; (iv) a transfer of the managing general partner's interest in the Joint Venture Entity 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 Joint Venture Entity or the proposed owner shall provide Housing Authority 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 Housing Authority with respect to the assumption of the Owner's or the Joint Venture Entity's obligations under this Agreement, and upon reasonable request of Housing Authority, delivers to the Housing Authority an opinion of transferee's counsel to the effect that this Agreement is the valid, binding and enforceable obligation of such transferee.

In addition, Housing Authority 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 Housing Authority with respect to the assumption of the Owner's obligations under this Agreement, and upon Housing Authority's request, delivers to the Housing Authority 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 very 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, managing member, or other managing entity of Owner or the Joint Venture Entity is removed by the equity investor thereof for cause following default under the applicable Joint Venture partnership or operating agreement, Housing Authority hereby approves the transfer of the general partner or managing member interest to another party that is selected by the equity investor 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 Housing Authority ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to Housing Authority 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) Housing Authority 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) Housing Authority shall have the right to exercise any remedies afforded to it under the Housing Authority Documents (as defined in the DDA) in connection with any default declared by the Third-Party Lender, provided that Housing Authority has cured any default under Third-Party Lender's deed of trust and other loan documents; and (iv) if Housing Authority acquires the Phase One Parcel and Phase One Development, Housing Authority 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 in accordance with this Agreement, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to Housing Authority 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, Housing Authority 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.

8.5. Modifications; FHA-Required Provisions. If a lender with respect to debt financing described in the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA) for the Phase One Development should, as a condition of providing financing for development of all or a portion of the Phase One Development, request any modification of this Agreement in order to protect its interests in the Phase One Development, Housing Authority shall consider and act upon such request in good faith and within a reasonable time period.

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 of receipt of written notice from Housing Authority of such default.

(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 of receipt of written notice from Housing Authority of such default.

(d) Owner's default in the performance of any term, provision or covenant under this Agreement or under any other Housing Authority 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 Housing Authority 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 equity investors of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner. Provided that Housing Authority has been given written notice of the address for delivery of notices to the equity investors, Housing Authority shall provide any notice of default hereunder to the equity investors concurrently with the provision of such notice to Owner, and as to the equity investors, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Section 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, Housing Authority 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 Qualifying 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 Housing Authority 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 Housing Authority 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 Housing Authority. 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 Housing Authority of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by Housing Authority 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 Housing Authority 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:

(a) personal delivery, in which case notice is effective upon delivery;

(b) 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;

(c) 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;

(d) 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.

Housing Authority: City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Owner: South Main Senior Lifestyles, LLC
_____
_____
Attention: _____

Equity Investor: _____
_____
_____
_____
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 Housing Authority. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Housing Authority is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Housing Authority Executive Director or by any person who shall have been designated by the Housing Authority Executive Director, without further approval by the governing board of the Housing Authority.

11.8. Non-Liability of Housing Authority and Housing Authority Officials, Employees and Agents. No member, official, employee or agent of the Housing Authority 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 Housing Authority, or for any amount of money which may become due to Owner or its successor or for any obligation of Housing Authority 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 Housing Authority 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 Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

SOUTH MAIN SENIOR LIFESTYLES, LLC,
a California limited liability company

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

By: _____
James R. Burns II, Managing Member

THE CITY OF MILPITAS HOUSING AUTHORITY

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: _____
Housing Authority 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

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 B

INSURANCE REQUIREMENTS

Except as otherwise provided in Section 6.7 of the Agreement to which this Exhibit is attached, 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 Housing Authority 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 Housing Authority, 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 Housing Authority, 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 Housing Authority, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;

(v) personal injury endorsement.

C. Workers' Compensation Insurance. Workers' 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 Housing Authority certificates evidencing the insurance required to be carried by Owner under this Exhibit B. If requested by Housing Authority, 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 Housing Authority, 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, Housing Authority 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. Housing Authority 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 Housing Authority.

(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 Housing Authority 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 Housing Authority may carry.

(h) Each policy shall expressly provide that Housing Authority shall not be required to give notice of accidents or claims and that Housing Authority 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, Housing Authority 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 Housing Authority 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 H-2

FORM OF PHASE TWO REGULATORY AGREEMENT

Recording requested by and when recorded mail to:

City of Milpitas Housing Authority
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.)

PHASE TWO

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF MILPITAS HOUSING AUTHORITY

and

SOUTH MAIN SENIOR LIFESTYLES, LLC

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

RECITALS

A. Owner has purchased an approximately 5.94 acre parcel of real property from the Housing Authority located at 1504-1620 South Main Street, Milpitas (the "**Property**") pursuant to the terms of an Amended and Restated Disposition and Development Agreement dated as of November 19, 2013 by and between the Housing Authority and Owner (the "**DDA**"), a memorandum of which has been recorded substantially concurrently herewith in the Official Records of Santa Clara County.

B. The Property was purchased by the former Redevelopment Agency of the City of Milpitas (the "**Former RDA**") using funds from its Low and Moderate Income Housing Fund (the "**Housing Fund**") in accordance with the requirements of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "**CRL**"). Upon dissolution of the Former RDA pursuant to ABx1 26 (as amended by AB 1484, the "**Redevelopment Dissolution Law**") as of February 1, 2012, the Housing Authority was designated to perform the housing functions and administer the housing assets of the Former RDA, which housing assets include the Property, as more fully described in the recitals of the DDA. In accordance with the DDA and the requirements imposed upon the Housing Authority pursuant to the Redevelopment Dissolution Law and the CRL, the Housing Authority has required that specified units of affordable housing be developed and operated by Owner on the Property.

C. In accordance with the DDA, the Property has been subdivided into various parcels, including the parcel of real property more particularly described in Exhibit A attached hereto (the "**Phase Two Parcel**").

D. Also in accordance with the DDA, Owner intends to construct, own and operate on the Phase Two Parcel a one hundred ninety (190) unit "independent living" senior housing rental development (the "**Phase Two Development**"), including specified units for very low-income households as set forth in this Agreement.

E. Specifically, the DDA and this Agreement provide that thirty-eight (38) of the residential units in the Phase Two Development shall be affordable to and occupied by or available for occupancy by very low-income senior households for a period of not less than fifty-five (55) years.

F. Pursuant to the DDA, and to facilitate the financially feasible provision of the units of affordable housing as set forth in this Agreement, the Housing Authority agreed to convey the Phase Two Parcel to Owner for its "fair reuse value" of One Dollar ($1.00), as

authorized by the CRL to facilitate such affordability (the "**Affordable Housing Facilitated Purchase Price**").

G. In recognition that the Property, including the Phase Two Parcel, was purchased by the Former RDA with Housing Funds, and as a condition to its agreement to convey the Phase Two Parcel to Owner at the Affordable Housing Facilitated Purchase Price, the Housing Authority requires the Phase Two Parcel to be subject to the conditions, restrictions, reservations and rights of the Housing Authority set forth herein.

H. 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 Two Development's Restricted Units (as defined below) for the benefit of the Phase Two 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, except as provided in the following sentence, 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 Housing Authority shall provide the Owner with a reasonably similar method of calculation of adjusted income as provided in said Section 6914. If any federal statute or regulations applicable to the Phase Two Development use an alternative definition of household income in determining household income qualification, such federally-mandated household income definition shall be used instead of the definition provided above.

"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 one (1) person for each studio apartment unit (including each Junior One Bedroom Unit) that is a Restricted Unit, and means two (2) persons for each One Bedroom Unit that is a Restricted Unit; provided, however, that if any federal statute or regulations applicable to the Phase Two Development use alternative household size

assumptions in calculating affordable rents, such federally-mandated household size assumptions shall be used instead of the assumptions provided above.

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

"**Junior One Bedroom Unit**" means a unit in the Phase Two Development containing less than 625 net rentable square feet.

"**One Bedroom Unit**" means a one bedroom unit in the Phase Two Development containing 625 or more rentable square feet.

"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; the cost of an adequate level of service for utilities paid by the tenant, pursuant to the tenant-paid utility allowances published by the Santa Clara County Housing Authority, including 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 Household in accordance with and as set forth in Sections 2.2, 2.3, and 2.4.

"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.

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 Two Parcel shall be used solely for the construction and operation of the Phase Two Development, consisting of a one hundred ninety (190) unit "independent living" 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 Housing Authority. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Phase Two 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 Two Development, all one

hundred ninety (190) of the dwelling units in the Phase Two Development shall be restricted for occupancy by households in which each household 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 Two Development, thirty-eight (38) of the dwelling units in the Phase Two 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) Twenty-eight (28) Junior One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households; and

(b) Ten (10) One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households.

2.4. Rents for Restricted Units. Rents for the Restricted Units shall be limited to Rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size (the **"Qualifying Rent"**).

2.5. Increased Income of Households. In the event that recertification of an Eligible Household's income indicates that the household's Adjusted Income exceeds one hundred twenty percent (120%) of the qualifying income for a Very Low-Income Household, then (a) such household's dwelling unit shall still be considered a Restricted Unit, (b) the Rent for such unit shall remain at one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size, and (c) Owner shall rent the next available dwelling unit of the applicable size (i.e., a Junior One Bedroom Unit of the applicable over-income household is occupying a Junior One Bedroom Unit, or a One Bedroom Unit if the applicable over-income household is occupying a One Bedroom unit) to an Eligible Household to comply with the requirement of Section 2.3. Once the next available unit has been rented to an Eligible Household in accordance with clause (c) above, the Rent for the over-income household may be increased to market rate rent. Notwithstanding the foregoing provisions of this Section 2.5, if any federal statute or regulations applicable to the Phase Two Development use alternative requirements with respect to treatment of Eligible Households whose incomes exceed qualifying incomes upon recertification, such federally-mandated requirements shall be used instead of the requirements provided above.

2.6. Unit Sizes, Design and Preferences. The Restricted Units shall consist of Junior One Bedroom Units and One Bedroom Units. 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 Two Development.

2.7. No Condominium Conversion. Owner shall not convert the Phase Two Development to condominium or cooperative ownership or sell condominium or cooperative rights to the Phase Two 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 Two 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 Two Parcel or the Phase Two 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 Two 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 Two Parcel or the Phase Two Development shall contain the following language:

(c) 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)."

(d) 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)."

(e) 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 Housing Authority 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 Housing Authority's request, shall make the originals available for inspection by Housing Authority and shall provide copies of such certificates to Housing Authority.

3.2. Annual Report; Inspections. Owner shall submit an annual report ("**Annual Report**") to Housing Authority in form satisfactory to Housing Authority, together with a certification that the Phase Two 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 Two 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 Housing Authority'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 Housing Authority 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 Housing Authority; provided however, during such time that the Phase Two 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 Housing Authority with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Housing Authority to enter and inspect the Phase Two Parcel and the Phase Two 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 Two Development.

4.2. Effectiveness Succeeds Conveyance of Phase Two 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 Two Parcel or the Phase Two Development or any part thereof or interest therein, unless this Agreement is terminated earlier by Housing Authority 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 Two Parcel and the Phase Two Development to the covenants and restrictions set forth in this Agreement. The Housing Authority 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 Housing Authority, regardless of any sale, assignment, conveyance or transfer of the Phase Two Parcel, the Phase Two 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 Two Parcel or the Phase Two Development (other than the tenants of the individual dwelling units within the Phase Two 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 Two Parcel or the Phase Two 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 Housing Authority 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 Two Parcel and the Phase Two Development in favor of Housing Authority.

6. Property Management; Repair and Maintenance; Marketing.

6.1. Management Responsibilities. Owner shall be responsible for all management functions with respect to the Phase Two Parcel and the Phase Two 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 Housing Authority may otherwise agree in writing, Housing Authority shall have no responsibility for management or maintenance of the Phase Two Parcel or the Phase Two Development.

6.2. Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Phase Two Parcel and the Phase Two Development in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Phase Two Parcel and the Phase Two 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 Two Parcel or at the Phase Two Development. Owner shall prevent and/or rectify any physical deterioration of the Phase Two Parcel and the Phase Two Development and shall make all repairs, renewals and replacements necessary to keep the Phase Two Parcel and the Phase Two Development in good condition and repair. Owner shall provide adequate security services for occupants of the Phase Two Development.

6.2.1. Housing Authority's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.2, and Owner fails, within ten (10) days after written notice from Housing Authority (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from Housing Authority (with respect to landscaping, building improvements and general maintenance), to cure or commence to cure and thereafter diligently pursue to completion the cure of such default, then Housing Authority, 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 Two Parcel and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Phase Two Parcel. All costs expended by Housing Authority in connection with the foregoing, shall constitute an indebtedness, and shall be paid by Owner to Housing Authority upon demand. All such sums remaining unpaid thirty (30) days following delivery of Housing Authority's invoice therefor shall bear interest at the rate of ten percent (10%) per annum.

6.3. Marketing and Management Plan. Not later than one hundred eighty (180) calendar days following the issuance of the first building permit for the Phase Two Development, Owner shall submit for Housing Authority review and approval, a plan for marketing and managing the Restricted Units in the Phase Two 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 selection criteria for Eligible Households, 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 the division of responsibilities between Owner and the Operator in the management and maintenance of the Phase Two Parcel and the Phase Two Development. The Marketing and Management Plan shall include the proposed form of rental agreement that Owner proposes to enter into with Phase Two Development Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Phase Two Parcel and the Phase Two Development, and throughout the term of this Agreement, shall submit proposed modifications to Housing Authority for its review and approval.

6.4. Approvals. If Housing Authority has not responded to any submission of the Management and Marketing Plan in accordance with Section 6.3 or a proposed amendment or change to a Management and Marketing Plan within thirty (30) days following Housing Authority's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Housing Authority.

6.5. 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 Two Parcel or the Phase Two 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.

6.6. Insurance Coverage. Prior to issuance of building permits for the Phase Two 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 equity investors providing financing for the Phase Two 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 Housing Authority of proof of insurance for the Phase Two Development, (ii) naming of Housing Authority and the City of Milpitas as additional insureds, and (iii) provision to Housing Authority of notice of cancellation or reduction in coverage.

6.7. Property Damage or Destruction. If any part of the Phase Two 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 equity investors providing financing for the Phase Two 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 Housing Authority Documents (as defined in the DDA) and easements of record, absent the written consent of Housing Authority, 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 Two Parcel or the Phase Two Development. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Phase Two Development in position superior to this Agreement, upon the request of Housing Authority, 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 Housing Authority may reasonably request. Notwithstanding the foregoing, Housing Authority 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 Two Development consistent with the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA).

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 Two Development or the Phase Two Parcel without the prior written consent of the Housing Authority; provided however, that none of the following Transfers shall require Housing Authority consent and each of the following Transfers shall be permitted: (a) a Transfer by Owner to a limited partnership, limited liability company, or other joint venture entity (collectively, **"Joint Venture Entity"**) in which Owner is the managing general partner, managing member, or other managing entity of the Joint Venture Entity, which Transfer is undertaken (1) for purposes of creating an ownership structure to obtain equity for development of the Phase Two Development consistent with the Financing Plan approved by Housing Authority pursuant to Section 1.3.1 of the DDA, or (2) for purposes of providing an ownership interest in Owner to the operator (or an affiliate of the operator) retained by Owner to operate the Phase Two Development; (b) the admission to such Joint Venture Entity of an equity investor or an operator (or an affiliate of the operator) retained by Owner to operate the Phase Two Development; and/or, (c) the transfer by the investor to an entity in which an affiliate is the general partner or managing member.

8.2. Permitted Transfers. In addition to Transfers otherwise permitted pursuant to the DDA and Section 8.1 above, the Housing Authority shall not withhold, delay or condition its consent to the following Transfers: (i) a transfer from the Joint Venture Entity to an entity which is controlled by or is under common control with the Joint Venture Entity's managing general partner (a **"Controlled Affiliate"**); (ii) a transfer of the initial equity investor's interest into an investor limited partner or partners, or subsequent transfers of such interests by the equity investor(s); (iii) a transfer from an equity investor to the Joint Venture Entity's managing general partner or a Controlled Affiliate; (iv) a transfer of the managing general partner's interest in the Joint Venture Entity to a Controlled Affiliate; or (v) a transfer to the construction or permanent lender for the Phase Two Development or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Phase Two 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 Joint Venture Entity or the proposed owner shall provide Housing Authority with a copy of the transferee's organizational documents and the final form of the agreement effectuating such transfer, (b) the Phase Two Development is and shall continue to be operated in compliance with this Agreement, and (c) the transferee executes all documents reasonably requested by the Housing Authority with respect to the assumption of the Owner's or the Joint Venture Entity's obligations under this Agreement, and upon reasonable request of Housing Authority, delivers to the Housing Authority an opinion

of transferee's counsel to the effect that this Agreement is the valid, binding and enforceable obligation of such transferee.

In addition, Housing Authority shall not withhold, delay or condition its consent to the sale, transfer or other disposition of the Phase Two Parcel and the Phase Two Development, in whole or in part, provided that (1) the Phase Two 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 Housing Authority with respect to the assumption of the Owner's obligations under this Agreement, and upon Housing Authority's request, delivers to the Housing Authority 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 an "independent living" senior rental housing project that includes very low-income tenants and that is of similar size to that of the Phase Two 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, managing member, or other managing entity of Owner or the Joint Venture Entity is removed by the equity investor thereof for cause following default under the applicable Joint Venture partnership or operating agreement, Housing Authority hereby approves the transfer of the general partner or managing member interest to another party that is selected by the equity investor and approved by Phase Two Development lender(s); provided that (i) following such transfer, the Phase Two 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 Two Development for the benefit of a lender other than Housing Authority ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to Housing Authority 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) Housing Authority 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) Housing Authority shall have the right to exercise any remedies afforded to it under the Housing Authority Documents (as defined in the DDA) in connection with any default declared by the Third-Party Lender, provided that Housing Authority has cured any default under Third-Party Lender's deed of trust and other loan documents; and (iv) if Housing Authority acquires the Phase Two Parcel and Phase Two Development, Housing Authority shall have the right to transfer the Phase Two Parcel and Phase Two Development without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Phase Two Development in accordance with this Agreement, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to Housing Authority 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 Two Development or the Phase Two 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, Housing Authority shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Phase Two Development or the Phase Two Parcel that such violation has occurred.

8.5. Modifications; FHA-Required Provisions. If a lender with respect to debt financing described in the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA) for the Phase Two Development should, as a condition of providing financing for development of all or a portion of the Phase Two Development, request any modification of this Agreement in order to protect its interests in the Phase Two Development, Housing Authority shall consider and act upon such request in good faith and within a reasonable time period.

9. Default and Remedies.

9.1. Events of Default. The occurrence of any Two 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 Two Parcel and the Phase Two Development as required hereunder, and the failure of Owner to cure such default within 10 days of receipt of notice from Housing Authority of such default.

(c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Phase Two Parcel or the Phase Two Development or failure to pay any other charge that may result in a lien on the Phase Two Parcel or the Phase Two Development, and Owner's failure to cure such default within 10 days of receipt of notice from Housing Authority of such default..

(d) Owner's default in the performance of any term, provision or covenant under this Agreement or under any other Housing Authority 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 Housing Authority 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 equity investors of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner. Provided that Housing

Authority has been given written notice of the address for delivery of notices to the equity investors, Housing Authority shall provide any notice of default hereunder to the equity investors concurrently with the provision of such notice to Owner, and as to the equity investors, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Section 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, Housing Authority 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 Qualifying 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 Housing Authority 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 Housing Authority 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 Two Development or the Phase Two 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 Two Development or the Phase Two Parcel with counsel reasonably approved by Housing Authority. 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 Housing Authority of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by Housing Authority 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 Housing Authority 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:

(a) personal delivery, in which case notice is effective upon delivery;

(b) 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;

(c) 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;

(d) 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.

Housing Authority: City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Owner: South Main Senior Lifestyles, LLC
_____
_____
Attention: _____

Equity Investor: _____
_____
_____

_____
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 Housing Authority. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Housing Authority is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Housing Authority Executive Director or by any person who shall have been designated by the Housing Authority Executive Director, without further approval by the governing board of the Housing Authority.

11.8. Non-Liability of Housing Authority and Housing Authority Officials, Employees and Agents. No member, official, employee or agent of the Housing Authority 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 Housing Authority, or for any amount of money which may become due to Owner or its successor or for any obligation of Housing Authority 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 Housing Authority 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 Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

SOUTH MAIN SENIOR LIFESTYLES, LLC,
a California limited liability company

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

By: _____
James R. Burns II, Managing Member

THE CITY OF MILPITAS HOUSING AUTHORITY

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: _____
Housing Authority 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

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 TWO 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

Except as otherwise provided in Section 6.6 of the Agreement to which this Exhibit is attached, prior to issuance of building permits for the Phase Two 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 Two Parcel or the Phase Two 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 Two Parcel, and (b) cover floods if the Phase Two Parcel is in a Special Hazard Area, as determined by the Federal Emergency Management Housing Authority 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 Housing Authority, 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 Two Parcel and the Phase Two 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 Housing Authority, 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 Two Development or the Phase Two Parcel;

(ii) premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Phase Two Parcel or the Phase Two 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 Housing Authority, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;

(v) personal injury endorsement.

C. Workers' Compensation Insurance. Workers' compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Phase Two Parcel or engaged in services or operations in connection with the Phase Two Development or the Phase Two Parcel. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Phase Two 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 Two 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 Two 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 Housing Authority certificates evidencing the insurance required to be carried by Owner under this Exhibit B. If requested by Housing Authority, 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 Housing Authority, the City of Milpitas, Owner or any tenant of the Phase Two 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, Housing Authority 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. Housing Authority 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 Housing Authority.

(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 Housing Authority prior to commencement of construction of the Phase Two 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 Housing Authority may carry.

(h) Each policy shall expressly provide that Housing Authority shall not be required to give notice of accidents or claims and that Housing Authority 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 Two Parcel and the Phase Two 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, Housing Authority 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 Two Parcel or the Phase Two 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 Housing Authority 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 Two 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

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: City of Milpitas Housing Authority 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 City of Milpitas Housing Authority, a public body, corporate and politic (the "**Housing Authority**") effective as of _____, 20__.

RECITALS

A. Housing Authority and South Main Senior Lifestyle, LLC, a California limited liability company (the "**Developer**") entered into that certain Amended and Restated Disposition and Development Agreement (the "**DDA**"), dated as of November 19, 2013, 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 Housing Authority 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.

C. The Housing Authority has determined that the Phase One Development has been satisfactorily completed in accordance with the DDA.

NOW, THEREFORE, Housing Authority hereby certifies as follows:

1. The Phase One Development has been satisfactorily completed in conformance with the DDA.

2. All use, maintenance and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable in accordance with the DDA. This Certificate does not constitute evidence of Developer's compliance with those covenants in the DDA that survive the issuance of this Certificate, including without limitation, compliance with the Phase One Regulatory Agreement entered into pursuant to the DDA.

3. This Certificate does 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 the Phase One Development or any part thereof and does not constitute a notice of completion under California Civil Code Section 3093.

4. Nothing contained in this instrument shall modify any provisions of the DDA or any other document executed in connection therewith.

IN WITNESS WHEREOF, Housing Authority has executed and issued this Certificate of Completion as of the date first written above.

THE CITY OF MILPITAS HOUSING AUTHORITY

By: _____***FORM-DO NOT SIGN***_____

Name: _____
Executive Director

ATTEST:

By: _____***FORM- DO NOT SIGN*** _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: _____***FORM-DO NOT SIGN*** _____
Housing Authority Counsel

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

EXHIBIT A

PHASE ONE PARCEL

(Attach legal description.)