

RECORDING REQUESTED BY:

City of Milpitas

WHEN RECORDED, MAIL TO:

Attn:

(SPACE ABOVE FOR RECORDER'S USE)

APNs: 086-22-027, 086-22-028, 086-22-046, 086-22-047, and 086-22-048

PUBLIC STREET MAINTENANCE AGREEMENT

THIS PUBLIC STREET MAINTENANCE ("Agreement") is made and entered into as of November 18, 2014 ("Effective Date") by and between SOUTH MAIN SENIOR LIFESTYLES, LLC, a California limited liability company ("Developer") and CITY OF MILPITAS, a municipal corporation of the State of California ("City"). Developer and the City may collectively be referred to herein as the "Party" or the "Parties".

RECITALS:

A. The Milpitas Housing Authority ("Housing Authority") is the owner of certain real property located in the City of Milpitas, County of Santa Clara, State of California, as shown on Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. The Parties entered into a First Amended and Restated Disposition and Development Agreement on November 19, 2013, and a Memorandum of the Disposition and Development Agreement was recorded in the Santa Clara County Recorder's Office, as Document No. 22457857 (First Amended DDA), for the purposes of Developer purchasing the Property for development as follows:

1. The first phase residential development ("Phase One Development") consist 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 includes ten (10) residential units available at affordable housing cost to income-qualified very low income households.

2. The second phase residential development ("Phase Two Development") consist 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 includes thirty-eight (38) residential units available at affordable housing cost to income-qualified very low income households.

C. Simultaneously with the approval of this Agreement, the Milpitas City Council approved Vesting Minor Tentative Map No. TP14-0001, Site Development Permit No. SD14-0006, and Density Bonus No. DB14-0001 for the Phase One Development. Vesting Minor Tentative Map No. TP14-0001 will create three (3) legal parcels including two (2) parcels for the construction of two (2) public streets (“City Public Streets”).

D. Developer will construct the two (2) public streets, as depicted in Exhibit A, attached hereto and incorporated herein by reference, as part of the Phase One Development, and will be required to maintain the two (2) public streets as further set forth in the Conditions of Approval for the Phase One Development entitlements described above and more particularly described in this Agreement.

E. The Parties desire to enter into this Agreement to set forth the roles and responsibilities of the Parties relating to the maintenance of the City Public Streets depicted in Exhibit A of this Agreement.

NOW, THEREFORE, for value consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Grant of License. City grants Developer a non-exclusive license to maintain, repair, and replace those improvements to be constructed in, on, above, below, or within the City Public Streets as further depicted on Exhibit A, attached hereto and incorporated herein by reference (the “Public Street Improvements”). The parties acknowledge that the Public Street Improvements once completed will be dedicated to the City. To the extent the depiction of the Public Street Improvements set forth in Exhibit A varies from the actual Public Street Improvements constructed and dedicated to the City, then Exhibit A shall be modified to include the actual Public Street Improvements constructed and dedicated to City.
2. Party Status. For purposes of this Agreement, Developer shall be considered solely as a non-exclusive licensee and not as an agent or subsidiary of the City; no possessory interest or right to own, lease, occupy or control the Public Street Improvements or the City Public Streets are granted herein in any way.
3. Developer Defined. For purposes of this Agreement, the term “Developer” shall include any transferee or successor-in-interest.
4. Maintenance Obligations of Public Street Improvements.
 - (a) Upon completion of the Public Street Improvements and dedication of the Public Street Improvements from Developer to City, Developer shall, at Developer’s sole cost and expense, fully and timely perform and satisfy any and all terms, conditions, and maintenance obligations of this Agreement. Developer shall, at Developer’s sole cost and expense, provide labor, supervision, supplies, materials, equipment, and any and all other tools and manpower necessary to clean, preserve, maintain and repair and replace the City Public Street and Public Street Improvements, as further set forth herein. The maintenance services required

herein are referred to as the “**Maintenance Services**” and shall be subject to City review and approval.

- (b) Developer agrees and acknowledges that the City Public Street, as depicted in Exhibit A, will be public streets and open to the public as solely determined by City. Nothing herein gives Developer the right to restrict, exclude, or in any manner prohibit any person from the City Public Streets. If Developer believes that any portion of the City Public Streets need to be restricted or closed for public safety purposes to perform the Maintenance Services described herein, Developer shall obtain City’s prior written approval of any restriction on access and also obtain City’s prior written approval of the method of providing notice to the public and traffic handling.
- (c) Developer and each of their respective employees, contractors, or agents shall have a non-exclusive right to enter into, over, and across the City Public Streets for the limited purpose of performing the Maintenance Services of the City Public Streets and Public Street Improvements subject to the approval requirements outlined in Exhibit C.
- (d) Developer shall perform the Maintenance Services in full compliance with the maintenance standards set forth by the City for other similar public streets maintained by City and as further set forth in this Agreement (the “**City Standards**”). All maintenance performed under this Agreement shall be subject to City review and approval. After completion of the Public Street Improvements and prior to dedication of the City Public Streets, including the Public Street Improvements, the City and Developer shall immediately meet to discuss such maintenance obligations. Thereafter, City and Developer shall meet when requested by the City to confirm the scope of the maintenance obligations being performed by the Developer is consistent with City Standards. The costs of such maintenance shall be exclusively borne solely by Developer, provided, however, any costs associated with Capital Improvements for the Public Street Improvements shall be borne and paid by the City except as provided in Section 4(f) below and as further described in Exhibit C. Subject to Section 4(f) below, Capital Improvements is defined for purposes of this Section as any repair or replacement above and beyond the Maintenance Services set forth in this Agreement. In addition, if the City elects to change or modify any aspect of the design of the Public Street Improvements or the landscaping of the Public Street Improvements after completion and dedication of the Public Street Improvements, the costs associated with such changes or modifications shall be borne and paid by the City. In no way, shape, or form will Developer get any payments, tax credits or any form of compensation from City for the performance of such maintenance herein.
- (e) Service Requests. Developer shall respond to all special service requests within forty-eight (48) hours. Special service requests can include any aspect of duty under the Maintenance Services, including graffiti abatement, the repair of vandalism (e.g., the scattering of broken glass), and pavement damage. All potential safety hazards or dangerous condition as determined solely by City shall be addressed within the same day; all other repairs shall be worked within the

regular maintenance schedule as soon as possible and shall commence within a maximum of forty-eight (48) hours.

(f) Scope of Work.

Developer shall furnish all supervision, labor, material, equipment and transportation required to maintain and/or repair the City Public Street and the Public Street Improvements in a safe, clean, functional, and attractive condition throughout the Term. All Maintenance Services shall be performed in accordance with all procedures set forth in operating manuals and warranty documentation for the care and preservation of any Public Street Improvements, applicable maintenance standards of the Public Street Improvements, City Public Street maintenance standards, and in conformance with Exhibit C, and all applicable laws and regulations relating to maintenance and repairs of the Public Street Improvements. All Maintenance Services performed under this Agreement shall be subject to City review and approval, including repairs and/or replacement of the Public Street Improvements.

(g) Work Force.

- i. Developer shall designate one qualified representative with experience in public street maintenance to (1) meet with the City on a quarterly basis at the City Public Street; (2) be available by telephone for any emergency; (3) schedule and coordinate maintenance and repairs required under this Agreement; (4) coordinate and prepare pesticide and incident reports; and (5) address and respond to any questions or concerns that may arise during the performance of this Agreement.
- ii. All Developer employees, agents, representatives, contractors or subcontractors (“**Work Force**”) to perform Maintenance Services under this Agreement shall be personally presentable at all times. All Work Force shall be competent and qualified, and shall be U.S. citizens or have the legal right to work in the United States.
- iii. All Work Force personnel shall be qualified to perform the duties assigned to them by Developer and possess the requisite licenses and necessary permits to perform such Maintenance Services. All Work Force shall conduct themselves at all times in a courteous and businesslike manner.

(h) Days and Hours of Services.

Maintenance Services shall be performed on Monday, Tuesday, Wednesday, Thursday, and Friday between 8:00 a.m. and 5:00 p.m., unless agreed to otherwise in writing

(i) Materials.

All materials used in the Maintenance Services, that are not standard materials used by the City shall be approved in advance by City’s Director of Public Works (Director) prior to usage as part of the Maintenance Services. Developer shall meet all agricultural licensing and reporting requirements.

(j) Compliance.

- i. Developer shall comply with all City rules, regulations, and policies relating to Public Street use, and special permitted public street activities at the Public Street Improvements. Unless explicitly authorized in this Agreement, nothing herein shall give Developer the authority to alter, revise, or otherwise restrict the public's use of the City Public Streets or the Public Street Improvements.
- ii. Developer, or its contractor, shall be solely responsible for, and will pay, any excise, taxes, fees, contributions, or charges applicable to the conduct of its business or which may be levied on the Maintenance Services hereunder.
- iii. Developer may not make any improvements, alterations, additions, or changes to the Public Street Improvements other than normal maintenance as described herein and in Exhibit C and in furtherance of providing agreed upon Maintenance Services, without obtaining City's prior written consent.
- iv. Developer and/or its contractor, subcontractor, agent, or representative shall not store any equipment, materials, or supplies in, on or upon the City's Public Street or Public Street Improvements.

5. Damage or Destruction to Improvements.

In the event that the Public Street Improvements are damaged by fire or other casualty or event during the Term of this Agreement, Developer shall at Developer's sole cost, within thirty (30) days, commence and diligently pursue to completion the repair, replacement or reconstruction of the Public Street Improvements

6. Liens.

Developer shall keep the City Public Street and Public Street Improvements free from any encumbrances or liens arising out of any work performed, materials furnished or obligations incurred by or for Developer, provided however that Developer may contest any such liens in good faith by appropriate proceedings. Developer shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Developer and shall keep the City Public Street free and clear of all mechanics' and material liens in connection therewith. The City shall have the right to post or keep posted on the City Public Street, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the City Public Street by Developer. If any such lien is filed, the City may, but shall not be required to, upon written notice to Developer, take such action or pay such amount as may be necessary to remove such lien. Developer shall reimburse City for all reasonable sums paid by City under this Section within thirty (30) days after written notice is received from City of the amount expended.

7. Insurance of Developer.

- (a) Before beginning any work under this Agreement, Developer shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work consisting of the construction of the Public Street Improvements and the ongoing maintenance of the Public Street Improvements hereunder by the Developer and

its agents, representatives, employees, and subcontractors. Developer shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Developer shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce copies of said policies to the City upon demand. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

(b) Subcontractors.

Developer shall include all contractors or subcontractors it retains to perform Developers obligations under this Agreement as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

(c) Workers' Compensation. Developer shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Developer in the performance of its responsibilities under this Agreement. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. The insurer shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled, except after thirty (30) days' prior written notice has been given to the City.

(d) Commercial General and Automobile Liability Insurance.

i. General requirements. Developer, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from Developer's performance, or failure to perform, its obligations under this Agreement, including the use of owned and non-owned automobiles.

ii. Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed.

12/90) Code 1 (“any auto”). No endorsement shall be attached limiting the coverage.

(e) Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- i. City and its officers, officials, agents, and employees (the “City Additional Insureds”) shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed pursuant to this Agreement by or on behalf of Developer, including the insured’s general supervision of Developer; products and completed operations of Developer with respect to the Public Street Improvements; premises owned, occupied, or used by Developer to the extent the same pertain to Developer’s obligation under this Agreement; and automobiles owned, leased, or used by the Developer to the extent the same pertains to the Developer’s obligation under this Agreement.
- ii. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- iii. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, agents, and employees, and that, except as otherwise provided herein, no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- iv. Any failure of Developer to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, officials, agents, and employees.
- v. An endorsement shall state that coverage shall not be suspended, voided, or canceled except after thirty (30) days' prior written notice has been given to the City.
- vi. Verification of Coverages.
Insurance is to be placed with insurers acceptable to the City Manager. Developer shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to:

jmoneda@ci.milpitas.ca.gov, or mailed to the following postal address or any subsequent email or postal address as may be directed in writing by the Director of Public Works:

The City of Milpitas
Director of Public Works
Jeff Moneda
455 East Calaveras Blvd, 4th Floor
Milpitas, CA 95035

- vii. Insurance coverage levels under this Agreement may be modified by the City, in its sole discretion and provided that such coverage levels are commercially reasonable, upon one (1) year's advance notice to the Developer.
- viii. Developer shall provide to the City certificates of insurance upon acquisition and renewal of insurance coverage.
- ix. In no event shall Developer be obligated to insure the City Additional Insureds with respect to any loss to the extent such loss is caused by the sole negligence or willful misconduct of the City, its employees, representatives, or agents.

8. Duration.

This term of this Agreement is perpetual unless otherwise terminated by agreement of both Parties in writing.

9. Right of City to Remedy Failure of Maintenance Obligation.

If Developer fails to comply with the provisions of this Agreement, then City may deliver written notice to Developer identifying the specific defects regarding the maintenance of the Developer Maintained Improvements. Subject to Section 4, Developer shall have Thirty (30) calendar days to correct the City's concerns, provided that if such correction cannot be completed within such thirty (30) calendar day time period, then Developer shall be afforded a reasonable amount of additional time to correct such City's concerns provided Developer commences such correction during such thirty (30) calendar day time period and diligently pursues such correction. Notice provided by the City shall specify the date Developer must remedy the City's concerns in order to avoid action by the City. If the Developer disagrees in good faith with the City's concerns, Developer shall notify the City of such disagreement within seven (7) business days of receipt of such notice and the parties shall discuss in good faith the City's concerns and Developer's disagreement with such concerns. Notwithstanding the foregoing, if the City determines an emergency situation exists which must be remedied immediately, then the City will provide written notice to Developer specifying the emergency situation must be remedied within twenty-four (24) hours or City may remedy such emergency situation on its own and submit an invoice to Developer for immediate payment.

If after notice from the City, Developer fails to correct the specific defects identified in the City's notice within the specified time period set forth above, the City shall have the right to remedy the defects. The City may retain, at its election its own contractors, or the Developer's contractors, or other appropriate third party company to complete the work. Any costs incurred by the City for maintenance of the City Public Street shall be solely borne by the Developer. The City shall provide an invoice for the maintenance cost incurred by the City to Developer. Developer shall remit payment to the City within thirty (30) days from receipt of the invoice. The Parties agree that any maintenance undertaken by the City under this section shall not terminate the maintenance obligation of Developer. In the event of non-compliance with the City's notice more than twice in any twelve (12) month period, or lack of prompt reimbursement, the City retains the right to any collection remedies it may have according to law.

10. City's Costs of Maintenance a Lien.

If the City incurs costs in restoring or maintaining the public street improvements after following the procedure set forth above, the City shall make demand on the Developer for payment, if the Developer fails to pay the costs incurred by the City within 30 days of the date demand was made, the City may make the costs a lien upon the real property depicted in Exhibit A by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws simple interest at the rate of 7 percent a year until paid.

11. Indemnification.

Developer hereby covenants and agrees to indemnify, defend, and hold City, its officers, agents, and employees harmless from and against any and all claims, damages (including damage to property and injury to persons), demands, losses, obligations, judgments, liabilities, costs and expenses (including, without limitation, attorneys' and other fees) (collectively, "Losses") arising from or in any way connected with or related to any of the following: (i) any lawsuit, arbitration, administrative proceeding or other legal action directly concerning Developer's and/or its agents' maintenance or construction of the City Public Street Improvements and, (ii), any breach by Developer of any of its obligations under this Agreement. However, in no event shall Developer be obligated to defend or indemnify the City with respect to Losses to the extent caused by the sole negligence or willful misconduct of the City, its employees, representatives, or agents.

(a) If any portion of the City Public Street or any of Public Street Improvements, or any portion of the City Property is damaged by any of the activities conducted by Developer or its contractors or agents hereunder, Developer shall promptly, at its sole cost, repair any and all such damage and restore the City's Public Street, Public Street Improvements or any part of the City Property to substantially the same condition as it was prior to such damage, reasonable wear and tear accepted.

12. Validity.

If any one or more of the terms, provisions, promises, covenants, conditions or option provisions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, conditions and option provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

13. Notices.

Unless otherwise provided in this Agreement, all notices, demands, or other communications given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been given upon personal delivery or as of the second business day after mailing in the United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address or to such other person as either party may designate:

City:

City Milpitas
455 East Calaveras Boulevard, Fourth Floor
Milpitas, California 95035
Attention: Director of Public Works
Telephone: (408) 586-3000

Developer:

South Main Senior Lifestyles, LLC
c/o Callahan Property Company, Inc.
5674 Stoneridge Drive, #212
Pleasanton, CA 94588
Attn: Joe Callahan
Telephone: (925) 463-9205

14. Headings.

The titles or headings of the sections of this Agreement are not a part of the Agreement and shall have no effect upon the construction of or interpretation of this Agreement.

15. Binding Effect.

This Agreement, and the terms, provisions, promises, covenants, conditions and option provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

16. Nondiscrimination.

The Developer covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the following conditions:

- (a) That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, ancestry, gender, disability or sexual orientation, in the assignment of obligations or hiring for maintenance services on the City Public Street and Public Street Improvements herein operated.

17. Exhibits. This Agreement includes the following Exhibits that are attached hereto and incorporated herein:

Exhibit A	Developer Property and Public Streets
Exhibit B	Public Street Improvements Maintenance Functions
Exhibit C	Maintenance Services

18. General Provisions.

(a) Hazardous Materials.

- i. Developer covenants and agrees that it shall not cause or permit any Hazardous Material (as defined by “Laws” below) to be brought upon, kept, used, stored,

generated or disposed of in, on or about the City Public Street except in compliance with applicable environmental laws. Developer agrees that during the Term of this Agreement, Developer shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the City Public Street including, but not limited to, Hazardous Material Laws. Developer further agrees that during the Term of this Agreement, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials on, from or under the City Public Street in violation of any Hazardous Material Laws. Developer shall take reasonable precautions to eliminate any hazards relating to its activities on or about the City Public Street and all Public Street Improvements hereunder.

- ii. If Developer or any of its Members causes or permits the release of any Hazardous Materials in, on, under or about the City Public Street or any other City property, Developer shall, promptly, at no expense to City, take any and all appropriate actions to return the City Public Street or other City property affected thereby to the condition existing prior to such release and otherwise investigate and remediate the release in accordance with all applicable laws and requirements.
 - iii. Developer shall indemnify City from and against all claims or lawsuits during or after the Term of this Agreement relating to any release of Hazardous Materials as set forth in Section 9(A) above. The foregoing indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the City Public Street to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and re-vegetation of the City Public Streets and the Public Street Improvements.
- (b) Waiver. The waiver by one Party of any breach by any other Party of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.
 - (c) Entire Agreement. This Agreement, including all exhibits attached hereto, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the Parties to this Agreement.
 - (d) Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and unimpaired by the holding.
 - (e) Compliance with Laws. Developer shall each comply with all applicable laws, ordinances, codes, and regulations (collectively “**laws**”) of the federal, state, and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

- (f) Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of California.
- (g) Venue. In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- (h) Time is Essence. Time is of the essence with respect to the performance of each and every provision of this Agreement.
- (i) Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. A copy, original or facsimile with all signatures appended together shall be deemed a fully executed Agreement.
- (j) Prevailing Wage. Developer shall carry out and shall cause its contractors to carry out the Maintenance Services 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 Maintenance Services, 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 City), protect and hold harmless the City, and its councilmembers, officers, employees, and agents from and against any and all demands, claims, losses or damages ("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, 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 City or Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement.

- (j) No Lease. This Agreement (i) is not a lease and does not grant Developer any real property rights in the City Public Street or Public Street Improvements, and (ii) shall not make Developer an agent for the City.
- (k) Ownership. City, as the fee owner of the City Public Street shall own the Public Street Improvements constructed under this Agreement. Nothing stated in this

Agreement shall transfer any ownership rights or interests of the City Public Street or Public Street Improvements from City to Developer.

- (l) Conflict. In the event of any conflicts between the terms and conditions of this Agreement and the terms an conditions of other agreements, the terms of this Agreement shall prevail.
- (m) Successor and Assigns. This Agreement shall inure to the benefit and binds each of the Parties successor and assigns.
- (n) Confidential Information. All City data, documents, discussions or other information developed or received by or for Developer in performance of this Agreement are confidential and must not be disclosed to any person or entity except as authorized in writing by City or as required by law (“Confidential Information”), provided however such Confidential Information may be disclosed to Developer’s lenders, accountants, lawyers, insurers, representatives and any other advisors who shall be required under a written agreement to comply with this provision. Developer, its respective agents, directors, officers, employees, consultants, contractors, and subcontractors shall hold the Confidential Information in strict

confidence and not use on its own behalf or disclose such Confidential Information to any third party, unless required by law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as set forth below.

Dated: _____
THE CITY OF MILPITAS,
A municipal corporation under the
laws of the State of California

Dated: _____
SOUTH MAIN SENIOR LIFESTYLES, LLC,
a California limited liability company

“CITY”

“DEVELOPER”

City Clerk

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

APPROVED AS TO FORM:

Name: Michael J. Ogaz
City Attorney

By: _____
James R. Burns II
Managing Member

By: _____

Name: Thomas C. Williams
Its: City Manager

[INSERT NOTARY]

EXHIBIT “B”

PUBLIC STREET MAINTENANCE FUNCTIONS

Cedar Way and Costa Street Maintenance. Developer shall maintain all public improvements along and within Cedar Way and Costa Street. Maintenance activities will include restoration and capital repairs necessary to meet the City’s standard of service.

Limits: Cedar Way and Costa Street shall be privately maintained public streets. The limit of private maintenance on Cedar Way shall begin from the back of concrete valley gutter on the east side of S. Main Street to Costa Street and bordered by back of sidewalks on Cedar Way. The limit of private maintenance on Costa Street shall begin from Cedar Way to the project southerly limit and bordered by the back of sidewalk and railroad sound wall.

Scope: Maintenance of these public streets shall include but not be limited to AC pavement, sidewalk, street lights, inlets, bioretention areas, railroad sound wall, landscapes, trees, striping and signing. Maintenance Functions shall be regularly performed to the following minimal standard levels:

- (1) Roadbed. Restoration and repair of the surface and base within the roadbed extending from curb line to curb line. The Pavement Condition Index (PCI) shall be maintained above 70. The roadbed shall roadbed shall be inspected annually. PCI’s below 70 shall be remediated within 4 months of inspection. Continuous vehicular access shall be maintained on all public streets.
- (2) Roadside. The area between the roadbed and the outer right-of-way boundary line. Maintenance includes the cleaning of inlets, bioretention areas, gutters, culverts, restoring side slopes, removal of drifted material, drift prevention, erosion control work and maintenance of sound walls.,
- (3) Curb, Gutter, and Sidewalk. Inspection, repair, and replacement of curbs, gutters, sidewalks, and other facilities as necessary to keep them in a reasonably safe condition. Sidewalks shall be kept free of tripping hazards. Continuous pedestrian (ADA compliant) access shall be maintained on all public sidewalks.
- (4) Litter and Debris. Pavement, sidewalks, landscapes, and storm drain inlets shall be kept free of debris and litter (street sweeping, etc.)
- (5) Pavement Delineation. All work necessary to maintain distinctive roadway markings on the travelled way including layout, removal of old stripe, painting of existing stripe, replacement/removal of raised pavement markers including the cleaning of markers, cross walks, and the use of thermoplastic, tape or raised bars.
- (6) Graffiti, Vandalism, Private Signage. Pavement, sidewalks, street lights, and sound walls shall be kept free of graffiti and private signage. Signage maintenance shall consist of replacement of existing signs and the repair, cleaning, and painting of signs.
- (7) Electrical. Inspection, repair, servicing, and replacement of street lighting, safety and sign lighting, traffic safety devices, and electrical facilities used to operate automatic watering systems. Street lights shall be in a good state of repair to provide nighttime illumination for safe vehicle and pedestrian travel. All traffic signal devices within Cedar Way, including detector oops, control boxes, etc. shall be maintained by the City.
- (8) Landscaping, Irrigation, Bioretention. Landscaping, trees, and planting shall be irrigated, pruned, and fertilized to maintain healthy growth. Maintenance shall include weed abatement, tree trimming/removal, plant replacement, chipping, and pest control Irrigation lines, meters, and appurtenances shall be maintained, repaired or replaced as needed. All bioretention Treatment facilities shall be maintained to comply with all the provisions of the Mitigation and Reporting Program and the approved Storm Water Control Plan and Operation & Maintenance agreement.

EXHIBIT “C”

MAINTENANCE SERVICES

MAINTENANCE FUNCTION	MAINTENANCE SERVICES	FREQUENCY	PERMIT* REQUIRED
Roadbed	Inspect roadway for PCI of 70 Remove, repair, replace or install pavement section.	1 time per year. W/in 4 months	No Yes
Roadside	Inspect, clean, and remove all trash and debris.	As needed.	No
Curb, Gutter & Sidewalk	Blow pedestrian walkways. Power wash hard surfaces. Removal, repair, or replacement of C&G or SW. Pedestrian Tripping Hazard Removal	1 time per week 2 times per year As needed. Within 24 hrs	No No Yes Yes
Litter & Debris	Remove litter and debris. Street sweeping.	Within 48 hrs City Standard	No No
Pavement Delineation	Respond to delineation damage causing travel hazard Repair, replace damaged delineation. Routine restriping	Within 24 hrs Within 48 hrs City Standard	No Yes Yes
Graffiti, Vandalism, Signs	Graffiti removal (washing, cleaning, and painting). Vandalism removal, repair, and or replacement. Sign cleaning, repair, removal, and/or replacement.	Within 48 hrs Within 48 hrs As needed.	No No No
Electrical	Inspect, repair, service, or replace electrical facilities.	As needed.	Yes in ROW
Landscaping	Trim and edge turf. Collect and dispose of leaves. (3/1-10/31) Collect and dispose of leaves. (11/1-2/28) Weed Abatement (turf areas) Weed Abatement (non-turf areas) Hedging to retain and fullness of shrubs. Aerate Turf using tractor-mounted aerator. Structural tree trimming (not in travel lane). Structural tree trimming in travel lane. Pruning and trimming trees. Trim and fertilize landscape planting.	2 times per month 1 time per month 2 times per month 4 times per year 3 times per year 2 times per year 2 times per year 1 time per year 1 time per year 2 times per year 2 times a year	No No No No No No No No Yes No No
Irrigation	Check system, adjust and repair as needed. Irrigation Controller (IC) annual cleaning. IC fuse check. IC fuse & battery replacement. Test backflow preventer & submit certificate.	2 times per month. 1 time per year. 1 time per year. As needed. 1 time per year.	No No No No No
Bioretention Area	Per SCVURPPP guidelines and approved O&M Plan.	Per O&M plan.	Yes
Pest Control	Control flies, ants, bees, spiders, & other insects in landscaping and treatment areas.	As needed.	No
Vector control	Provide rodent control and removal to maintain safe and attractive landscape.	As needed.	No
Sound Walls	Inspection of structural stability and foundation. Repair, replacement of wall and/or foundation Graffiti removal	1 time per year As needed. Within 48 hrs	No Yes No
Emergency Repair	All public safety concerns & hazard removal.	Within 24 hrs	No

*All fees for encroachment permits required for the performance and inspection of maintenance services are hereby waived.