REPORT TO MAYOR AND COUNCIL

NO: 08-210

Council Meeting: July 22, 2008

SUBJECT: Commitment of $1.2 Million in HOME Funds Toward the Ground Lease for the Development of up to 125 Units of Affordable Senior Housing at 660 S. Fair Oaks and Approval of Budget Modification No. 1

REPORT IN BRIEF

The City has negotiated a preliminary ground lease agreement with the County of Santa Clara at 660 S. Fair Oaks Avenue (County Clinic site) for a one-time upfront payment in the amount of $5.667 million from the City, which includes $450,000 toward the value of the ground lease, $5,050,000 in the value of the ground lease proceeds which will go toward the construction of a parking garage, and $167,000 toward demolition. In addition, nonprofit developer Mid-Peninsula Housing Coalition (MPHC), which the City approved as the developer of the proposed site in February 2008, will contribute $500,000 toward the upfront ground lease payment, for a total payment of $6.167 million to the County for the project to allow the development of up to 125 affordable senior housing units on a portion of the site.

On April 8, 2008, the City Council authorized the City Manager to enter into an exclusive right to negotiate agreement with MPHC for development of an affordable housing project at the County Clinic site at 660 S. Fair Oaks Avenue. Of the $5.667 million potential City commitment toward the project, $167,000 is for demolition, and the balance of funds are a one-time payment toward the ground lease, the proceeds of which will be used to construct a County parking garage adjacent to the site. From the City's contribution $4,467,000 is available from Housing Mitigation funds, and $1.2 million is available in federal HOME funds, which the City must commit to a project by July 31, 2008, or risk recapture of the funds by HUD. The attached HOME Agreement would serve as the timely commitment of these funds to the proposed senior project. Of a total estimated development cost of $347,000 per unit, the City's contribution would be $45,216 per unit, or 13%.

Approval is requested of Budget Modification No. 1 to appropriate $241,590 from the HOME Fund Reserve to this project. This appropriation will cover the amount of the $1.2 million HOME Fund contribution to this project that is not currently budgeted for FY 2008/2009. On June 25, 2008, the Housing and Human Services Commission approved for forwarding to City Council staff's recommendation to authorize the City Manager to commit $1.2 million in

HOME funds to the Fair Oaks senior development ground lease, as described in Alternative 1.

BACKGROUND

In the early nineties, representatives from both the City and various non-profits approached the County of Santa Clara to determine if a senior-housing complex, in conjunction with an expanded County medical clinic, could be developed on a parcel located at the Fair Oaks County Clinic site, at Fair Oaks and Garland near El Camino. The parcel had been identified as surplus and the intent was to develop the site into affordable senior housing and to replace the 30-year-old clinic building with a similar sized facility more responsive to the growing needs of the County. Over time, the County concept was revised to include the development of a larger, more expansive clinic of 41,000 square feet. The clinic is now under construction and nearing completion.

In September 2007, staff determined that since negotiations with the County had progressed that the participation of a selected developer would be most beneficial to the process. Staff issued a Request For Proposals (RFP) on November 8, 2007, to solicit a non-profit housing developer to build and manage an affordable senior rental project on land proposed to be leased from the County adjacent to the new Santa Clara Valley Medical Clinic. As a result of the review process, staff recommended and City Council approved the selection of Mid Peninsula Housing Coalition (MPHC) in February 2008 to enter into an exclusive agreement with the City.

The City and MPHC entered into an Exclusive Negotiating Rights Agreement (ENRA), approved by City Council on April 8, 2008, which outlines the actions and expectations of both parties during the pre-development phase for the housing project. The ENRA grants the developer the exclusive right to negotiate a long-term lease with the City for development and management of the senior housing project. The ENRA also identifies project management and financial contributions necessary by the developer during the term of the ENRA. The ENRA calls for a reasonable expenditure of funds by the developer for predevelopment. It is anticipated that the ground lease with the County will be executed in September 2008, and the Disposition and Development Agreement (DDA) with MPHC by October 2008.

EXISTING POLICY

The proposed project facilitates meeting Regional Fair Share Housing Goals established by the Association of Bay Area Government (ABAG) for jurisdictions for incorporation into local housing sub-elements and additional City goals stated below.

The City's Consolidated Plan places a priority on maintaining and increasing the inventory of affordable rental housing for families. The City's Housing and Community Revitalization Sub-Element contains two goals related to affordable housing in the community:

Goal E: Maintain and increase housing units affordable to households of all income levels and ages.

Goal F: Improve Housing conditions for people with special needs.
Assist new housing development and housing support services for the elderly.

The Community Development Strategy goal of Housing Affordability:
To actively promote the provision and protection of housing that is affordable to households of low and middle income.

DISCUSSION

As the future lessee, the City is offering to provide an assignment of a ground lease to MPHC. MPHC will build the maximum number of housing units, between 120 and 125, for very low income seniors on the site and in addition will provide at least 215 parking spaces for the Clinic. In the proposed development scenario, the City would contribute $5.667 million toward the cost of the ground lease payment, of which $167,000 is toward demolition, $450,000 toward ground lease payment, and $5,050,000 which the County will use for the garage construction costs. In addition, the nonprofit developer, MPHC, has agreed to provide $500,000 in permanent financing toward the upfront ground lease payment, for the total of $6.167 million to the project. There may be a need for a City bridge loan of up to 3 years to MPHC for its $500,000 contribution, depending upon the terms negotiated by the City with the County in the ground lease agreement. This loan would bear 3% interest and be for no longer than three years at maximum, and could be provided from HOME funds under this agreement, until repaid. The Santa Clara County Board of Supervisors approved a staff recommendation to approve a form of ground lease with the City at the June 24, 2008, Board of County Supervisors meeting. The County ground lease proceeds would be used for the construction of a County parking garage at the site by MPHC. The garage will be turned over to the County at the completion of construction. The County will assume all future maintenance and operating costs of the garage. Staff expects to bring the negotiated ground lease for City Council approval following approval by the County.

The proposed senior affordable housing development will consist of 120 to 125 units of senior housing units in a four-story building over podium parking, built in two concurrent components. The project will utilize an allocation of

120 Project-based vouchers to provide a service-enriched residence for low and extremely low income independent seniors with accessibility and livability.

The parking podium will accommodate approximately 90-100 parking spaces with a few surface spaces. It is anticipated that units will include 108 one-bedroom and 16 two-bedroom units with approximately 3,000 square feet of community space. The community space will host a library, a meeting room, and a computer lab. Residents will have access to a landscaped courtyard on the podium level. All units will be affordable to below 50% of Area Median Income (AMI), with over half being set-aside for residents below 30% AMI.

Project Financing

In order to achieve full financing for up to 125 units of affordable housing, MPHC has conceived of the project with two components or phases, but with concurrent construction. The two components would be reviewed by the City Planning and Building staff as one project, but they would require two ground lease areas, created through an assessors parcel map. The terms of the ground lease agreements for each ground lease area would be exactly the same between the City and the County. The City would then assign the ground lease areas to MPHC to secure development financing. This would allow the greatest leveraging of City resources by MPHC to obtain full project financing, and the City will not be a sub-lessee during the ground lease term.

The following Sources and Uses are proposed for the two component projects. The City's combined total contribution to both projects would be $5.667 million, with $1.2 million from HOME funds, and $4.467 million from Housing Mitigation Funds.

Component 1-- 75 units of senior affordable housing financed with 9% tax credit scenario:

Financing Sources	
City HOME/Housing Mitigation	$ 3,391,200
1st Mortgage	$ 5,128,242
Tax Credit Proceeds	$17,241,514
Deferred Developer Fee	$ 200,000
Developer obtained	$ 41,904
TOTAL	$26,002,860

Uses	
Land Cost	$ 3,706,200
Hard Costs	$16,381,387

Soft Costs	$ 5,915,273
TOTAL	$26,002,860

Component 2-- 50 units of senior affordable housing financed with 4% tax credits, Mental Health Services Act (MHSA) funding, and Multifamily Housing Program funds.

Financing Sources	
City HOME/Housing Mitigation	$ 2,275,800
1st Mortgage	$ 3,962,981
General Partner Equity	$ 574
Tax Credit Proceeds	$ 6,073,246
Multifamily Housing Program	$ 2,465,070
CalHFA loan	$ 44,311
Deferred Developer Fee	$ 340,000
General Partner Capital	$ 200,000
Mental Health Services	$ 1,800,000
Developer obtained	$ 44,311
TOTAL	$17,206,293

Uses	
Land Cost	$ 2,470,800
Hard Costs	$10,702,607
Soft Costs	$ 4,032,886
TOTAL	$17,206,293

The total development cost is approximately $347,000 per unit, with the City subsidy per unit of $45,216 or 13% of cost.

A critical aspect of ensuring the timely development of any project and the likelihood that it will go forward is obtaining the financing that will allow for construction to proceed. MPHC's proposal includes certification by the Housing Authority of the County of Santa Clara that it has received an allocation of 120 Project Based Section 8 vouchers (PBV) for low and extremely low income senior residents. This is a unique opportunity for the development of senior housing, and it should be noted that the Santa Clara County Housing Authority rarely offers these vouchers. It is unlikely that another allocation for senior housing projects will be available in the foreseeable future. The importance of the project-based voucher allocation is that the revenue generated due to the guaranteed rental revenue by HUD allows the property to support a larger permanent loan. Vouchers provide a subsidized rental income

from HUD at near market rate rents, while tenants pay only 30% of their income towards these rents.

The use of MHSA funding in Component 2 would allow MHSA eligible residents, who are seniors who are homeless or at risk of homelessness and are mentally ill. In addition they must be eligible for a Medicaid waiver program, or In Home Supportive Services, or Program of All Inclusive Care of the Elderly (PACE).

The allocation of project based Section 8 vouchers allows MPHC to offer the largest number of units to the lowest income category, and it also creates a unique, financing opportunity. The revenue generated by the rental vouchers will allow the agency to obtain a larger permanent conventional loan.

The Disposition and Development Agreement which will include the allocation Housing Mitigation and HOME funds and the total project description is now being negotiated and is anticipated to be brought to City Council for approval in September. It will outline specifically the development costs, contingencies and responsibilities of the developer. MPHC has committed to guarantee the cost of the construction of the County parking garage.

Developer Experience

MPHC has had a successful 33-year relationship with the City of Sunnyvale, and has earned a reputation as one of Northern California's leading nonprofit developers of affordable rental housing. MPHC has extensive experience in the development and management of affordable housing, both new construction and rehabilitation projects. MPHC has developed more than 6,000 affordable units in seven Northern California counties and has won numerous awards for its well-built and well-managed properties. MPHC owns and manages 578 affordable rental housing units in six properties in Sunnyvale which include: Moulton Plaza, an award winning 66-unit affordable rental housing project that opened in June 2006; Homestead Park, a 211-unit affordable family rental and senior housing project purchased to preserve affordability by MPHC in 2001; Aster Court, a 95-unit affordable family rental and senior housing project; Morse Court, a 35-unit affordable family rental housing project; Crescent Terrace, a 49-unit affordable senior rental housing project; and the Carroll Inn, a 121-unit single room occupancy, affordable housing project.

Of its total property portfolio, MPHC owns and operates 19 affordable senior housing projects containing 1,393 rental units. These include two projects containing 190 units currently under construction in Mountain View and Milpitas.

FISCAL IMPACT

HOME funds are available in the amount of $1.2 million to commit toward this project, conditional upon HUD approval of the National Environmental Policy Act (NEPA) submittal. $958,410 of this amount has already been appropriated in the FY 2008/2009 budget for this purpose. The remaining $241,590 will need to be drawn from the HOME Fund Reserve. The commitment of HOME funds to this project would ensure that the City would meet the timeliness requirement for fund obligation required by HUD. Housing Mitigation funds in the amount of $4.467 million are currently budgeted in FY 2008/2009 to subsidize the balance of the proposed project development gap.

Budget Modification No. 1 has been prepared to appropriate $241,590 from the HOME Fund Reserve to fund the additional amount necessary to cover the $1.2 million total commitment from the HOME Fund.

BUDGET MODIFICATION NO. 1
FISCAL YEAR 2008/2009

	Current	Increase (Decrease)	Revised
HOME Fund			
Expenditures:			
Project 827860 –Develop Affordable Senior Housing at Fair Oaks Site	$958,410	$241,590	$1,200,000
Reserves:			
HOME Reserve	$1,710,985	($241,590)	$1,469,395

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Authorize the City Manager to enter into a HOME Agreement to commit $1.2 million toward an upfront ground lease payment with the County of Santa Clara for the development of an affordable senior housing project of up to 125

units at the County Clinic site at 660 S. Fair Oaks Avenue and approve Budget Modification No. 1.

2. Authorize the City Manager to enter into a HOME Agreement with modifications to commit $1.2 million toward an upfront ground lease payment with the County of Santa Clara for the development of an affordable senior housing project of up to 125 units at the County Clinic site at 660 S. Fair Oaks Avenue.

3. Do not authorize the HOME Agreement.

RECOMMENDATION

Staff recommends Alternative 1: City Council authorize the City Manager to enter into a HOME Agreement to commit $1.2 million toward an upfront ground lease payment with the County of Santa Clara for the development of an affordable senior housing project of up to 125 units at the County Clinic site at 660 S. Fair Oaks Avenue.

Reviewed by:

Hanson Hom, Director, Community Development Department
Prepared by: Laura Simpson, Housing Officer

Approved by:

for Mary Bradley
Finance Director

Approved by:

for Amy Chan
City Manager

Attachments

A. Draft HOME Agreement
B. Exclusive Negotiating Agreement

ATTACHMENT A

DRAFT HOME AGREEMENT

AGREEMENT FOR THE CONDITIONAL COMMITMENT OF HOME FUNDS BY AND BETWEEN THE CITY OF SUNNYVALE AND MID-PENINSULA HOUSING COALITION

THIS AGREEMENT dated the _____ day of July 2008, is by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter "CITY"), and MID-PENINSULA HOUSING COALITION, a California non-profit corporation (hereinafter "DEVELOPER").

WHEREAS, representatives from both the CITY and various non-profits have approached the County of Santa Clara ("County") to discuss the development of a senior-housing complex on a parcel located near the County's Fair Oaks property, at Fair Oaks and Garland near El Camino in the City of Sunnyvale, in conjunction with an expanded County medical clinic; and

WHEREAS, on August 9, 2005 (RTC-05-266), the Sunnyvale City Council ("City Council") adopted a resolution vacating a portion of Garland Avenue to assist the County to maximize the use of the site for the medical clinic expansion. The City Council's action included that a communication be made to the Board of Supervisors for the County that the CITY strongly supported joint use of the site for affordable senior citizen housing; and

WHEREAS, at a closed session on October 16, 2007, staff provided the City Council with an update on the discussions with the County related to obtaining a ground lease for the site and, at that time, City Council authorized proceeding with negotiations; and

WHEREAS, negotiations between the CITY and the County to obtain a ground lease at 660 South Fair Oaks Avenue to allow the development of affordable senior housing are underway; and

WHEREAS, the CITY intends to pay costs related to the acquisition of the ground lease for the affordable housing development; and

WHEREAS, the CITY, as the future lessee, is offering to provide an assignment of a ground lease to the DEVELOPER who will build approximately 120-125 housing units for very low income seniors and in addition will provide at least 215 parking spaces for the new medical clinic; and

WHEREAS,CITY issued a Request for Proposal on November 8, 2007 to solicit a non-profit housing developer to build and manage an affordable senior rental project on land proposed to be leased from the County adjacent to the new medical clinic; and

WHEREAS, a critical aspect of ensuring the timely development of any project and the likelihood that it will go forward is obtaining the financing that will allow for construction to proceed. DEVELOPER's proposal included certification by the Housing Authority of the County of Santa Clara that it had received an allocation of 120 Project Based Section 8 vouchers for extremely low income senior residents (at or below 30% of area median income); and

WHEREAS, on February 12, 2008, the City Council approved the selection of DEVELOPER as the

developer of the affordable senior housing project at 660 South Fair Oaks Avenue; and

WHEREAS, subsequently, the CITY entered into an Exclusive Negotiating Rights Agreement (ENRA) with DEVELOPER to develop approximately 120-units of very low income senior housing on this parcel; and

WHEREAS, the CITY deems it desirable to enter into an Agreement with the DEVELOPER for the purpose of providing a conditional commitment of HOME funds, prior to the completion of the environmental review process, towards the payment on a ground lease to the County for the development of an affordable housing project for very low-income seniors; and

NOW, THEREFORE, in consideration of committing HOME funds for the acquisition of the ground lease located at 660 South Fair Oaks in order for DEVELOPER to produce affordable housing, the CITY and DEVELOPER, mutually agree as follows:

1. AVAILABILITY, FUNDING AND USE OF HOME FUNDS

A. This Agreement provides for the conditional commitment of HOME funds in accordance with 24 CFR 92.300 for the development of affordable housing. Upon City Council's approval of funding and once the project has met environmental review requirements, the funding reservation will then be converted to a project-specific HOME commitment and the CITY will proceed with a full written agreement that meets the requirements of the HOME regulations set forth in 24 CFR Part 92.

B. DEVELOPER acknowledges that this is a conditional commitment which does not constitute a commitment of funds until the satisfactory completion of an environmental review and receipt by the CITY for the release of funds from HUD under 24 CFR Part 58. The Environmental Review may result in a decision that may modify or cancel the CITY to provide funds to the project. This agreement to provide funds to the project is conditioned on the CITY's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

(1) Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the CITY of a release of funds from the U.S. Department of Housing and Urban development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on the CITY's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

(2) The parties acknowledge that this Agreement prohibits the parties from undertaking or committing any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance. Violation of this provision may result in the denial of any funds under the agreement.

(3) The parties also acknowledge that this agreement does not provide any legal claim to any amount of HOME funds to be used for the specific project or site unless and until the site has received environmental clearance.

C. The DEVELOPER is acting as a developer for the project under this Agreement. The DEVELOPER as a developer must obtain financing and construct the project.

D. Income limits will not exceed HUD's limits based on the limits in force and effect at the time of qualification. The current HUD income limits will be reflected in the final written agreement between the CITY and DEVELOPER for the HOME funds.

E. The CITY shall commit HOME funds in the amount of One million Two hundred and 00/100 Dollars ($1,200,000) toward the ground lease for the project as described in Exhibit A, conditioned upon the execution of a ground lease between the CITY and the County, expecting that construction can reasonably start within twelve (12) months of the agreement date.

2. PROJECT REQUIREMENTS

A. DEVELOPER shall comply with the applicable requirements of 24 CFR Part 92, Subpart F, the HOME Final Rule, which include:

(1) 24 CFR §92.250 Maximum per-unit subsidy: The amount of HOME Program funds that may be invested on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established by HUD based on the limits in force and effect at the time of rehabilitation. Current HUD per-unit dollar limits are available at the HUD office.

(2) 24 CFR §92.251 Property standards: Housing that is constructed with HOME Program set-aside funds must be decent, safe and sanitary and meet applicable CITY codes, ordinances, zoning ordinances and any necessary accessibility requirements at the time of project completion. Newly constructed housing must also meet the current edition of the Model Energy Code.

(3) 24 CFR §92.252 Qualification as Affordable Housing – Rental Housing: Periods of Affordability. HOME-assisted units must meet affordability requirements. The long-term lease shall be consistent with the HOME affordability requirements, which will be for a minimum of twenty years.

B. DEVELOPER shall comply with the applicable requirements of 24 CFR Part 92, Subpart H, which include:

(1) 24 CFR §92.350 Other Federal requirements: The DEVELOPER shall comply with the following Federal requirements set forth in 24 CFR part 5, Subpart A as specified below:

a. Nondiscrimination and equal opportunity: No person shall on the grounds of race, color, national origin, religion, age, sex, sexual orientation, status as a parent, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any

program or activity funded in whole or in part with HOME Program funds.

b. Anti-lobbying: No federal funds may be expended by the recipient of a cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress or an official or employee of the CITY in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

c. Debarment and Suspension: DEVELOPER shall comply with the nonprocurement debarment and suspension common rule in accordance with 24 CFR §84.13. This common rule restricts contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

d. Drug-Free Workplace: DEVELOPER shall comply with the certification requirements of the Drug-Free Workplace Act of 1988 in accordance with 24 CFR §84.13.

e. Restrictions on Assistance to Noncitizens and Qualified Aliens. The DEVELOPER shall comply with the restrictions on assistance to noncitizens and qualified aliens as described in 24 CFR Part 5. The definition of "Qualified Alien" is described in the Personal Responsibility and Work Opportunity Act (PRWOA). Certain noncitizens and qualified aliens, as described in PRWOA, are not eligible to apply for or receive federal public benefits under the project covered by this agreement. "Federal public benefits", includes but are not limited to, any financial assistance, public services, public or assisted housing, or any other similar benefit for which payment or assistance are provided to an individual, household, or family eligibility unit by funds of the United States. In determining and verifying eligibility of noncitizens and qualified aliens applications for services provided under this Agreement, DEVELOPER agrees to comply with requirements as provided in 24 CFR 5.510 and 5.512.

(2) 24 CFR §92.356(f)(1) Conflict of Interest: DEVELOPER certifies to HUD and the CITY that the DEVELOPER of a project assisted with HOME Program funds, or officer, employee, agent, consultant of the DEVELOPER may not occupy a HOME-assisted affordable housing unit in this project. In accordance with the provisions of 24 CFR §92.356(f)(2), exceptions to the provisions of 24 CFR §92.356(f)(1) may be granted by the CITY upon written request of the DEVELOPER on a case-by-case basis when the CITY determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the DEVELOPER's HOME-assisted project. DEVELOPER certifies to the CITY that, in the event the DEVELOPER becomes aware of any governing board member, director, officer, agent, consultant or employee of the DEVELOPER having a prohibited interest from the HOME-assisted project covered by this Agreement, DEVELOPER shall immediately notify the CITY.

C. DEVELOPER shall comply with the applicable requirements of 24 CFR Part 92, Subpart K, which include:

(1) 24 CFR §92.505 Applicability of uniform administrative requirements: DEVELOPER is required to establish standards for financial management systems in accordance with 24 CFR §84.21. DEVELOPER shall employ those management techniques necessary to insure adequate and proper fiscal accountability of all HOME Program funds received and disbursed. This requirement shall include separate ledgers and accounting for HOME Program funds. Source documentation of all HOME Program expenditures including payroll, purchase vouchers, and claims, etc., shall be kept on file by the DEVELOPER and reserved for a five (5) year period after project completion. Project completion is defined in paragraph 7 of this Agreement.

(2) 24 CFR §92.506 Audit: The DEVELOPER shall comply with the audit requirements of 24 CFR §84.26 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The DEVELOPER is required to submit a copy of the audit to the Assistant Director, HUD.

(3) 24 CFR §92.508 Recordkeeping: The DEVELOPER must establish and maintain sufficient records to enable the CITY and HUD to determine whether the DEVELOPER has met the requirements of the HOME Program regulation. All records pertaining to the use of HOME Program funds pursuant to this Agreement must be retained for five (5) years after project completion. DEVELOPER shall establish an accurate, complete, and orderly system of recordkeeping pursuant to 24 CFR §92.508 for administrative and financial records including but not limited to:

a. Records concerning designation as a Developer;
b. Administrative Records;
c. Financial Records;
d. Debarment Records;
e. Description and location of the activity assisted with HOME funds;
f. Documentation that the project meets a national objective;
g. Eligibility determination for each recipient of the project;
h. The source and application of funds for the project, including supporting documentation;
i. Records demonstrating that the requirements of 24 CFR Part 84 have been met;
j. Records concerning the use of funds for Developer set-aside funds and demonstrating compliance with the requirements of 24 CFR §92.300;
k. Records demonstrating compliance with the requirements of this Agreement.
l. Records demonstrating resolution of any findings or concerns detected during required inspections, monitoring reviews and audits.

3. DURATION OF AGREEMENT

A. This Agreement commences on July ___, 2008 and shall terminate upon the execution of a full written agreement that meets the requirements of the HOME regulations set forth in 24 CFR Part 92.

B. This Agreement may be terminated or suspended in whole or in part at any time by written agreement of the parties. This Agreement may be terminated or suspended by the CITY, in whole or in part, for cause, after notice and an opportunity for the DEVELOPER to present reasons why such action should not be taken. Grounds constituting causes include, but are not limited to: DEVELOPER fails to comply with provisions of this Agreement or with any applicable laws, regulations, guidelines, or procedures, or is unduly dilatory in executing its commitments under this Agreement or a prior Agreement with the CITY, including, but not limited to, submission of required reports due, resolution of monitoring findings, and monitoring results; purposes for the HOME funds have not been or will not be fulfilled or would be illegal to carry out; DEVELOPER has submitted incorrect or incomplete documentation pertaining to this Agreement.

C. In the event CITY must initiate proceedings to enforce the terms and conditions of this Agreement or seek redress for damages caused by the DEVELOPER's breach of this Agreement, CITY shall be entitled to recover all costs, including without limitation, court costs and attorneys fees, incurred in such proceedings.

D. If the DEVELOPER fails to demonstrate to the CITY's satisfaction that it has met the requirements of this Agreement, the CITY may take any or all corrective or remedial action, or actions, including but not limited to:

(1) DEVELOPER shall prepare and follow a schedule of actions that are approved by the CITY for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the project.

(2) DEVELOPER shall establish and follow a management plan that assigns responsibilities that is approved by the CITY for carrying out the remedial actions.

(3) CITY may cancel or revise activities likely to be affected by the performance deficiency.

(4) DEVELOPER shall reimburse HOME Program funds to the CITY in any amount not used in accordance with the requirements of this Agreement.

(5) CITY may take necessary actions to decertify the agency as a DEVELOPER.

(6) Any and all rights and remedies available in law or equity.

4. PERSONNEL POLICIES AND INTERNAL PROCEDURES

A. Personnel policies and operating procedures of the DEVELOPER shall be the responsibility of and shall be determined by the DEVELOPER; such policies and procedures shall be in accordance with applicable laws and regulations. Copies of such personnel policies and internal operating procedures, including any amendments thereto, shall be furnished to the CITY within ten (10) days upon request.

B. DEVELOPER may enter into contracts for necessary assistance in completing the tasks to be performed under this Agreement. Such contracts shall be in accordance with applicable law and regulations; and further, DEVELOPER shall be responsible for the work performed by such contractors/subcontractors and for all expenditures made under such contracts.

5. INDEPENDENT CONTRACTOR STATUS

A. DEVELOPER is an independent contractor, notwithstanding any other provisions of this Agreement, and shall be fully responsible for and shall have the sole and exclusive control of DEVELOPER employees, contractors/subcontractors, and agents in the means and methods required in fulfilling the obligations of the DEVELOPER under this Agreement.

B. DEVELOPER agrees to conduct itself in a manner consistent with such status and further agrees that it will neither hold itself out as nor claim to be an officer, employee or agent of the CITY by reason of this Agreement, and that it will not by reason of this Agreement make any claim, demand, or application for any right or privilege applicable to an officer, employee or agent of the CITY, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

6. INSURANCE

A. DEVELOPER, at its sole cost and expense, shall obtain and maintain in full force and effect, throughout the entire term of this agreement, insurance coverage insuring not only DEVELOPER and its subcontractors, if any, but also, with the exception of worker's compensation and employer's liability insurance, CITY, its officers, agents, and employees, and each of them. CITY, its officers, agents and employees, and each of them, shall be named additional insureds on any such policy. The policy amounts shall be as follows:

____ Not less than $500,000.00 for death or injury to any person

____ Not less than $500,000.00 for loss of or damage to property

____ Not less than $500,000.00 for each occurrence

____ Not less than $500,000.00 combined single limit for death or injury to persons, or loss of or damage to property.

Said insurance shall include not less than $500,000 coverage for each occurrence of legal malpractice.

Certificates of such insurance shall be filed with CITY concurrently with the execution of this agreement, or, with the approval of CITY's CONTRACT MANAGER, within ten (10) days thereafter. Said certificates shall be subject to the approval of CITY's CONTRACT MANAGER, shall name the CITY as an "Additional Insured", and shall contain an endorsement stating that said insurance is primary coverage and will not be cancelled or altered by the insurer except after filing with CITY's CONTRACT MANAGER not less than thirty (30) days' written notice of such cancellation or alteration. Current certifications of such insurance shall be kept on file at all times during the term of this agreement with the CITY.

B. Workers' Compensation: DEVELOPER shall comply with the Labor Code of the State of California, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code.

C. Proof of Insurance: The DEVELOPER shall not commence work under this Agreement until it has obtained all the insurance required under this section through an insurance provider duly authorized to provide insurance in the Stat of California and the CITY has approved the insurance. The DEVELOPER, within ten (10) days of execution of this Agreement, shall furnish the CITY with proofs of insurance showing the types, amounts and classes of operations covered, effective dates and dates of expiration of the policies. Such proofs of insurance shall contain substantially the following statement: "The insurance covered by this certification will not be cancelled or materially altered, except after ten (10) days written notice has been received by the CITY."

7. INDEMNIFICATION AND HOLD HARMLESS

The DEVELOPER understands and agrees while it is performing under this Agreement that it will hold harmless and indemnify the CITY, its officials, and employees against all claims and actions and all expenses defending same, that are brought as a result of any injury or damage sustained by any person or property in consequence of any act or omission by the DEVELOPER.

8. MISCELLANEOUS

A. Interpretation and Enforceability: Should it become necessary to determine the meaning or otherwise interpret any word, phrase or provision of this Agreement, or should the terms of this Agreement in any way be the subject of litigation in any court of law or equity, it is expressly agreed where definitions are provided by federal law then federal law shall control; however, where definitions are not provided by federal law then the laws of the State of California shall control same.

B. Governing Law and Severability: Federal law and the laws of the State of California shall govern this Agreement. In the event that any provisions or clauses of this Agreement shall be adjudicated by a court of competent jurisdiction to conflict with applicable law, such conflict shall not affect any other provisions or clauses of this Agreement, which shall be given full force and effect without the conflicting provisions or clauses. To this end, the provisions and clauses of this Agreement are declared severable.

C. Non-Waiver of Defaults: Any failure by the CITY, at any time, to enforce or require the performance of any of the terms or conditions of this Agreement, or to exercise a right hereunder, or

to make payment or reimbursement of the DEVELOPER, shall not, nor shall it be construed to constitute a waiver or limitation of any terms, conditions or rights of the CITY or HUD hereunder or at law.

D. Assignment: DEVELOPER shall not assign any interest in this Agreement, and shall not transfer any interest in the same, without the prior written consent of the CITY, which may be withheld in the CITY'S sole discretion.

E. Binding Effect: The terms and conditions of this Agreement shall extend and inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, trustees, successors and assigns.

F. Ability and Experience: DEVELOPER certifies that it possesses experience, knowledge, and ability in conducting and performing the project, which is the subject of this Agreement and agrees to use such experience, knowledge, and ability in its prosecution and completion of this Agreement. DEVELOPER agrees to put forth its best efforts on behalf of low-income families and promises to adhere to good business and professional practices in its prosecution and completion of this Agreement.

G. Agreement Composition: This Agreement constitutes the entire Agreement between the parties.

H. General: The captions and headings used in this Agreement are intended for convenience only and shall not be used for purposes of construction or interpretation.

I. Points of Contact:

(1) In the case of DEVELOPER, the address is as follows:

Executive Director
Mid-Peninsula Housing Coalition
303 Vintage Park Drive, Suite 250
Foster City, CA 94404

(2) In the case of the CITY, the address is as follows:

Housing Officer
Department of Community Development
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

9. MODIFICATION OR AMENDMENTS TO AGREEMENT

A. Written agreement required: This Agreement may be extended, renewed or otherwise modified or amended only by the written agreement of the duly-authorized representatives of the CITY and the DEVELOPER.

B. Prior approval of CITY required: All proposed modifications or amendments to this Agreement, including the waiver of any provision herein, must be submitted to the CITY, in writing, and approved by the CITY prior to the desired effective date of the amendment.

The parties to this Agreement hereby indicate their acknowledgment and acceptance of the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives.

For purposes of identification, this Agreement shall be numbered Conditional HOME Commitment 0809-01: Mid Peninsula Housing Coalition

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate.

APPROVED AS TO FORM:

_____
City Attorney

City of Sunnyvale

BY:_____
Housing Officer

Mid-Peninsula Housing Coalition

BY:_____
Executive Officer

Exhibit A
Project Description for 660 South Fair Oaks, Sunnyvale

Total Project will consist of from 120 to 125 units of Senior Affordable Housing in a four-story building over podium parking, built in two concurrent components. Project will utilize an allocation of 120 Project-based vouchers to provide a service-enriched residence for extremely low income independent seniors with accessibility and livability. The proposed building will include up to 125 units, constructed with Type V material. The building will be of high quality finishes and indistinguishable from market-rate developments.

The parking podium will accommodate approximately 90-100 parking spaces with a few surface spaces. Units will include 108 one-bedroom and 16 two-bedroom units with approximately 3,000 square feet of community space, which will host a library, meeting room, and computer lab. Residents will have a landscaped courtyard on the podium level. All units will be affordable to below 50% AMI, with over half being set-aside for below 30%AMI. With project-based vouchers, up to 96% of the units may be affordable to 30% AMI, regardless of rent restrictions.

Resident Services will include:

Transportation— Santa Clara Outreach program provides 24 one-way or 12 round trips per year to each senior 62 years and older who earns below $20,000 per year.

Health Services—Valley Health Center-Fair Oaks County Health Clinic is directly adjacent to the proposed project.

Library- MPHC will coordinate with the City of Santa Clara Library for monthly pick up and delivery of reading materials.

Computer access and training—On-site computer lab and training.

Social Club/Education—On-site educational programs include various workshops on prevention of health disorders, such as diabetes, osteoporosis, heart disease, etc. Presentations will be offered on information around Medicare and utility assistance, predatory lending, and others.

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ATTACHMENT B

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENTS

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

by and between

MID-PENINSULA HOUSING COALITION,
a California nonprofit public benefit corporation

and

CITY OF SUNNYVALE,
a municipal corporation

THIS EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (this "**Agreement**") is entered into effective as of June 24, 2008 ("**Effective Date**") by and between the City of Sunnyvale, a municipal corporation ("**City**") and Mid-Peninsula Housing Coalition, a California nonprofit public benefit corporation ("**Developer**"). City and Developer are hereinafter collectively referred to as the "**Parties.**"

RECITALS

A. The County of Santa Clara (**"County"**) is the owner of a 2.76 acre parcel of real property (the **"County Parcel"**) located at 660 South Fair Oaks Avenue in Sunnyvale, California (Assessor's Parcel No. 211-02-022). The County Property has been used as a health center and a park.

B. The County is in the process of constructing a 41,000 square foot replacement medical facility and related improvements (**"Medical Clinic"**) on a portion of the County Parcel. The prior health center will be demolished following the completion of the new clinic.

C. The City and County have commenced discussions regarding the terms of a ground lease whereby a portion of the County Parcel, previously designated for surfacing parking, would be used for the construction and operation of an affordable housing project (the **"Housing Parcel"**), as generally reflected on the preliminary site plan attached hereto as Exhibit A.

D. To accomodate a housing project at the Housing Parcel, the County would require the construction of a multi-level parking garage (**"Parking Garage"**) on the County Property providing approximately 215 parking spaces for the exclusive use of the Medical Clinic.

E. In response to an RFP issued by the City, the Developer submitted a proposal for the development of an affordable housing development on the Housing Parcel;

F. The affordable housing development will consist of the construction of approximately 120 senior rental housing units, all of which will be affordable to either low- or very-low income households, and related improvements (collectively, the **"Project"**).

G. At its meeting of February 12, 2008, the City's governing board (**"City Council"**) directed staff to pursue negotiations with Developer regarding the preparation of a memorandum setting forth the terms of the proposed Project.

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

1. Good Faith Efforts to Negotiate. The Parties shall use their best efforts to successfully negotiate a Disposition and Development Agreement (**"DDA"**) and related documents which shall describe the terms and conditions that will govern the transfer of the Housing Parcel to the Developer and the development of the Project. The Parties shall diligently and in good faith pursue

such negotiations. In connection with the negotiations between the Parties, Developer agrees to meet and negotiate with the City and the County in connection with the terms and conditions of a ground lease for the Housing Parcel (**"Ground Lease"**). Developer acknowledges that the City cannot execute a DDA or an assignment of the Ground Lease until such time as the City and County have finalized and approved the Ground Lease or other disposition agreement. In no event shall this Agreement impose any binding obligation on the City to convey the Housing Parcel to Developer, nor does it obligate the City to grant any approvals or authorizations required for the Project. Without limiting the generality of the foregoing, Developer expressly acknowledges that a DDA and other documents resulting from negotiations contemplated hereby shall become effective only if such documents are approved by the City Council following notice and hearing as required by applicable law and compliance with all other requirements of law, including without limitation the California Environmental Quality Act (**"CEQA"**).

1.1 Disposition and Development Agreement. Subject to the approval of a definitive agreement by the City Council, the Parties preliminarily agree that the DDA will include the following items:

1.1.1 Rent; Closing Costs. The Parties shall mutually agree upon the annual rent for the Housing Parcel, allocation of closing costs, and payment of title insurance.

1.1.2 Legal Costs. Each Party shall pay its own legal fees incurred in connection with the negotiation and preparation of the DDA and related documents. The City shall take lead responsibility for the drafting of such documents.

1.1.3 AS-IS Conveyance. The City makes no representations or warranties regarding the physical condition of the Housing Parcel or its suitability for Developer's use. Developer shall accept the Housing Parcel in its as-is condition.

1.1.4 Project. The preliminary scope for the Project includes approximately 120 residential units, on the Housing Parcel, together with parking and landscaping. The Parties acknowledge that the Project scope is preliminary in nature and subject to modification pending CEQA review and review by the City Planning Department.

1.15 Affordability Requirements. The allocation of units between households of low income (no more than 50% of medial income) and very low income (no more than 30% of medial income) shall be subject to the City's final approval and must satisfy any requirements imposed by the County pursuant to terms of the Ground Lease.

1.1.6 Development Costs. Developer will be responsible for all Project costs, including without limitation all design, development, and construction costs and the cost of all on-site improvements. Developer and City will evaluate all off-site public improvements and on-site environmental remediation, if any, and agree to each Parties' responsibility for funding and completion. In connection with the foregoing, it is anticipated that Developer will incur expenses related to the design and engineering of the Parking Garage prior to the execution of the DDA. To the extent that the City has approved such expenses, the DDA shall provide for the reimbursement of these expenditures by the City.

1.1.7 Design Review. The DDA will specify the schedule for Developer's submission and City review of design and construction drawings and plans for the Project.

1.1.8 Construction and Permanent Financing. Developer shall be required to demonstrate the financial feasibility of Project construction and operation, and shall be required to provide City with evidence of firm commitments for Project acquisition, construction and permanent financing within the schedule set forth in the DDA. The DDA and related documents will address the terms and conditions for any construction and/or permanent financing that the City may provide for the Project.

2. Developer's Exclusive Right to Negotiate With City. The City agrees that it will not, during the term of this Agreement (the **"Term"**) consider or solicit the submission of bids, offers or proposals by any person or entity with respect to the development of the Housing Parcel, and City shall not engage any broker, financial adviser or consultant to initiate or encourage proposals or offers from other parties with respect to the disposition or development of the Housing Parcel.

3. Term. The Term of this Agreement shall commence on the Effective Date, and shall terminate two hundred forty (240) days thereafter, unless extended or earlier terminated as provided herein. The City Manager is authorized to extend the Term by up to an additional one hundred eighty (180) days upon the mutual written agreement(s) of the Parties without further approval of the City Council.

4. Relationship of Parties. The Parties agree that nothing in this Agreement shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

5. Developer's Studies. During the Term, Developer shall use its best efforts to prepare, at Developer's expense, any studies, surveys, plans, specifications and reports (**"Developer's Studies"**) Developer deems necessary or desirable to determine the suitability of the Housing Parcel for the Project. Such studies may include, without limitation, title investigation, relocation analyses (if applicable), marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses and design studies. Without limiting the foregoing, the City may require that the Developer obtain, in connection with the City's negotiation of the Ground Lease or DDA, additional studies or reports reasonably necessary for the assessment of the Housing Parcel or Project; provided, however, Developer shall not be obligated to expend in excess of $50,000 on studies or reports required exclusively by the City.

6. Right of Entry. Developer shall be responsible for obtaining County's advance written permission for access to the Housing Parcel as may be necessary to prepare the Developer's Studies. In connection with entry onto the Housing Parcel, Developer shall and hereby agrees to indemnify, defend (with counsel reasonably approved by County or City, as applicable) and hold harmless the Indemnitees (defined in Section 15) from and against all Claims (defined in Section 15) resulting from or arising in connection with entry upon the Housing Parcel by Developer or Developer's agents, employees, consultants, contractors or subcontractors. County may require Developer to execute a right of entry agreement satisfactory to County prior to entry onto the Housing Parcel.

Developer's inspection, examination, survey and review of the Housing Parcel shall be at Developer's sole expense. Developer shall provide City with copies of all reports and test results within ten (10) days following completion of such reports and testing, whether or not such reports and test results are completed prior to or after the expiration or earlier termination of this Agreement. Developer shall repair, restore and return the Housing Parcel to its condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer shall at all times keep the Housing Parcel free and clear of all liens and encumbrances affecting title. Developer's indemnification obligations, obligations to provide reports and studies, and obligations to discharge liens that attach to the Housing Parcel as set forth in this Section 6 shall survive the expiration or earlier termination of this Agreement.

7. City's Reports and Studies. Within 15 days following the Effective Date, City shall make available to Developer for review or copying at Developer's expense all nonprivileged and nonconfidential studies, surveys, plans, specifications, reports, and other documents with respect to the Housing Parcel that City has in its possession or control.

8. Developer's Pro Formas and Evidence of Financing. During the Term, Developer shall seek financing commitments from prospective lenders or financing partners for the Project. Prior to execution of the DDA contemplated by this Agreement, Developer shall provide City with a pro forma for the Project that confirms the financial feasibility of Developer's proposed redevelopment of the Property. During the period specified in the DDA, Developer shall provide evidence satisfactory to City that Developer has secured binding commitments, subject only to commercially reasonable conditions, for all financing necessary for the successful completion of the Project.

9. Expenses. Except as otherwise expressly provided in this Agreement, all costs and expenses (including, without limitation, staff, consultant and legal fees and expenses) incurred in connection with this Agreement and the activities contemplated hereby shall be paid by the Party incurring such expense.

10. Confidentiality; Dissemination of Information. During the Term, each Party shall obtain the consent of the other Party prior to issuing or permitting any of its officers, employees or agents to issue any press release or other information to the press with respect to this Agreement; provided however, no Party shall be prohibited from supplying any information to its representatives, agents, attorneys, advisors, financing sources and others to the extent necessary to accomplish the activities contemplated hereby so long as such representatives, agents, attorneys, advisors, financing sources and others are made aware of the terms of this Section. Nothing contained in this Agreement shall prevent either Party at any time from furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations.

11. Execution of Disposition and Development Agreement. If the Parties successfully negotiate a DDA, the City's staff will submit the proposed DDA for review by the City Council. The City shall have no legal obligations to grant any approvals or authorizations in connection with the Project until a final DDA has been approved by the City Council and duly executed on behalf of the City.

12. Termination. This Agreement may be terminated at any time by mutual consent of the Parties. City shall have the right to terminate this Agreement upon its good faith determination that Developer is not proceeding diligently and in good faith to carry out its obligations pursuant to this Agreement. City shall exercise such right by providing at least ten (10) days' advance written notice to Developer which notice shall describe the nature of Developer's default hereunder. Notwithstanding the foregoing, if Developer commences to cure such default within such 10-day period and diligently prosecutes such cure to completion within the earliest feasible time but not later than ninety (90) days following the date of the notice, this Agreement shall remain in effect. Developer shall have the right to terminate this Agreement, effective upon 10 days' written notice to City, if the results of its investigation of the Housing Parcel are unsatisfactory with respect to Developer's desired redevelopment activities or if Developer is unable to obtain other necessary approvals, financing, rights or interests. Neither Party shall have the right to seek an award of damages as a result of the termination of this Agreement pursuant to this Section.

13. Effect of Termination. Upon termination as provided herein, or upon the expiration of the Term and any extensions thereof without the Parties having successfully negotiated a DDA, this Agreement shall forthwith be void, and there shall be no further liability or obligation on the part of either of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 10 (Confidentiality), Section 15 (Hold Harmless) and Section 19 (No Brokers) and any other provisions that expressly so state, shall survive such termination. Provided further, that upon termination or expiration of this Agreement, Developer shall deliver to City, within 15 days of termination or expiration, all of the Developer's reports and studies not previously provided to City.

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

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

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City: **City of Sunnyvale**
456 West Olive Avenue
Sunnyvale, CA 94088-3707

Attn: Amy Chan

With a copy to:

City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94088-3707
Attn: David Kahn, City Attorney

Developer: **Mid-Peninsula Housing Coalition**
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: President

15. Indemnification. Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the City, the County, and their respective elected and appointed officials, officers, agents, representatives and employees (all of the foregoing, "**Indemnitees**") 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**") arising out of or in connection with this Agreement; provided however, Developer shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee. Developer's indemnification obligations set forth in this Section 15 shall survive the expiration or earlier termination of this Agreement.

16. Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

17. Entire Agreement; Amendments In Writing; Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

18. Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, which may be withheld in such Party's sole discretion, and any such transfer or assignment without such

consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

19. Brokers. Each Party warrants and represents to the other that no brokers have been retained or consulted in connection with this transaction. 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 expiration or earlier termination of this Agreement.

20. Captions. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

CITY OF SUNNYVALE

By: _____

Name: AMY CHAN

Title: CITY MANAGER

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

MID-PENINSULA HOUSING COALITION,
a California nonprofit public benefit corporation

By: _____
Fran Wagstaff, President