



Council Meeting: November 25th, 2008

SUBJECT: Approval of the Ground Lease Agreement for 660 S. Fair Oaks, between the City and the County of Santa Clara for the Development of up to 125 Units of Affordable Senior Housing

REPORT IN BRIEF

As previously authorized by Council, the City has negotiated a ground lease agreement with the County of Santa Clara for the site owned by the County located at 660 S. Fair Oaks Avenue. See Attachment A. The City will make a one-time upfront payment in the amount of \$5.667 million. This amount includes \$450,000 for the ground lease, \$5,050,000 in ground lease proceeds to be used toward the construction of a parking garage, and \$167,000 for demolition costs. The City selected the nonprofit housing developer Mid-Peninsula Housing Coalition (MPHC) as the developer of the proposed site in February 2008, and City HOME funds were committed toward the project in July 2008. MPHC will contribute \$500,000 for the ground lease, for a total payment of \$6.167 million to the County. The project will involve the development of approximately 125 affordable senior housing units, including one management unit on the site.

On April 8, 2008, the City Council authorized the City Manager to enter into an Exclusive Negotiating Rights Agreement (ENRA) with MPHC for development of an affordable housing project at the County Clinic site at 660 S. Fair Oaks Avenue. The proposed project site is owned by the County of Santa Clara. The site is located adjacent to the new County Health Clinic. The City has been in discussions with the County for many years over the potential development of the site for affordable senior housing.

Negotiation of the ground lease was complex, because it involved the City, County and MPHC. The City and County staff have completed negotiations on the terms in the Ground Lease Agreement between the County, the Landlord, and the City, the Tenant, with the exception of an indemnification for a generator that should be resolved quickly. The intent of the proposed agreement is to allow the City to assign the ground lease to the developer, MPHC, for the term of the lease—85 years, to allow MPHC to construct a County parking garage, and develop and operate up to 125 senior affordable units on the site. As the assignee of the lease, and to ensure the feasibility of

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the proposed affordable housing development, MPHC was included in the review of all terms of the draft ground lease agreement.

In approximately December 2008, a Disposition and Development Agreement (DDA) for the project will be negotiated between MPHC and the City. The DDA will detail the funding for the project, development requirements and regulatory rent restrictions for the \$5.667 million City commitment toward the project.

BACKGROUND

The City issued a Request For Proposals (RFP) on November 8, 2007, to identify 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. The City Council approved entering into an ENRA with developer MPHC, on April 8, 2008. The ENRA outlined the responsibilities of the parties during the pre-development phase. The ENRA granted the developer the exclusive right to negotiate the assignment of the City's rights under a long-term ground lease for development and management of the senior housing project. The ENRA also identified project management and financial contributions necessary by the developer during the term of the ENRA.

Over the past several months, the City Attorney's Office (together with outside counsel) and the City's Housing Officer, with input from MPHC, have negotiated the detailed terms of the draft ground lease agreement with Santa Clara County Counsel and staff. The terms of the ground lease are described in the following sections of this report.

EXISTING POLICY

The proposed project facilitates meeting Regional Fair Share Housing Goals established by the Association of Bay Area Government (ABAG) for jurisdictions to incorporate 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.

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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 tenant of the Fair Oaks site from the County, the City will provide an assignment of the ground lease to MPHC. The ground lease will have a term of 85 years. MPHC will build 125 housing units, including a management unit, for extremely low and very low income seniors on the site and, in addition, will construct a parking garage that will provide at least 215 parking spaces for the County Clinic. The housing development, for financing purposes only, will have two separate parcels, with two leased property descriptions, although the two ground leases will otherwise have almost the identical lease provisions. The separate ground leases allows MPHC maximum ability to leverage non-local funding sources. The two affordable housing components will be reviewed by the City's Community Development Department as one project and constructed by MPHC as one complete project. MPHC will apply for City permits to construct the garage prior to the start of the housing development construction to provide replacement parking for the Clinic.

The terms of the ground lease provide that the City will contribute \$5.667 million toward the cost of the ground lease payment, of which \$167,000 is for demolition, \$450,000 is for the ground lease , and \$5,050,000 which will be used for the garage construction costs. In addition, the nonprofit developer, MPHC, has agreed to provide \$500,000 toward the upfront ground lease payment, for the total of \$6.167 million to the project. The Santa Clara County Board of Supervisors authorized County staff to negotiate a ground lease with the City at the June 24, 2008, Board of County Supervisors meeting. Upon completion of the parking garage, ownership of the garage will be turned over to the County, which will be responsible for all future maintenance and operating costs of the garage.

The proposed senior affordable housing development will consist of approximately 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 residences for low and extremely low income independent seniors with accessibility and livability.

The parking podium will accommodate approximately 90-100 parking spaces for tenants 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 include 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

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Median Income (AMI), with over half being set-aside for residents below 30% AMI.

One provision of the ground lease related to indemnification by Mid-Pen for an emergency generator for the Health Clinic remains under final negotiation, and it is anticipated that the issue will be resolved in the next 2 weeks without any cost implications for the City. Accordingly, Council is requested to delegate authority to the City Manager to make minor modifications deemed necessary and advisable to the ground lease.

City staff has determined that the project is categorically exempt, Class 32, In-fill Development Projects (Section 15322) pursuant to the California Environmental Quality Act (CEQA). A Notice of Exemption will be issued and filed with County Clerk following the Council's approval of the ground lease.

Project Timeline

The following is a draft of the timeline for the proposed project, including project review, preliminary site work, construction of the garage, and housing construction.

<u>Date</u>	<u>Activity</u>
October 2008	Tentative Map submission to City
October 2008	Plans for Parking Garage submitted for City review
November 2008	PD Combining District Application submitted by MPHC
December 2008	City and County Execute Ground Lease Agreement
January 2009	DDA with MPHC submitted for City Council approval
February 2009	Final Map Recordation
February 2009	Relocation of water line
February 2009	PD Application to City Council
April 2009	Begin Garage Construction
March-Aug 2009	Apply for housing tax credit financing
July 2009	Apply for building permits for housing
October 2009	Begin construction of housing
April 2011	Construction of housing complete

The City has executed a Right of Entry Agreement with Santa Clara County, which has been assigned to MPHC. This will allow MPHC to begin preliminary soils testing and predevelopment work to ensure that the water line can be relocated in a timely manner, prior to the garage construction. The garage construction is anticipated to begin in April 2009, and to be completed, by October 2009.

The construction of the affordable housing will begin after MPHC financing commitments are obtained for the full project cost. Construction on the

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housing are anticipated to begin in October 2009 and will take approximately 18 months to complete.

Project Financing

In order to achieve full financing for up to 125 units of affordable housing, MPHC has structured the project with two components or phases, but with concurrent construction. The two components will be reviewed by the City Planning and Building staff as one project, but will contain two leased areas. The terms and provisions of the ground lease agreements for each ground lease area are almost identical. The City will assign the ground leases to MPHC to secure development financing. This allows the greatest leveraging of City resources by MPHC to obtain full project financing. Following the completion of the housing improvements to be constructed by MPHC, the City will be released from all obligations under the ground lease. Component 1 will be comprised of 75 units for \$26 million and Component 2 will include 50 units of senior affordable housing for \$17 million. Both projects will have the benefit of an allocation of project-based vouchers, allowing the project to serve extremely and very low income tenants.

The Disposition and Development Agreement between the City and MPHC will include the allocation of Housing Mitigation and HOME funds and the total project description. The DDA is now being negotiated and is anticipated to be brought to City Council for approval in January 2009. It will outline the development costs, contingencies and responsibilities of the developer.

FISCAL IMPACT

The City contribution to this project consists of \$4,467,000 from the Housing Mitigation Fund and \$1.2 million in federal HOME funds, which the City committed to the project on July 22, 2008. Of a total estimated development cost of \$347,000 per unit, the City's contribution would be approximately \$45,000 per unit, or 13%.

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.

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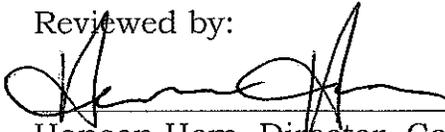
ALTERNATIVES

1. Approve the attached Ground Lease Agreement, and delegate authority to the City Manager to make minor modifications deemed necessary and advisable to the Ground Lease Agreement.
2. Do not approve the proposed Ground Lease Agreement.

RECOMMENDATION

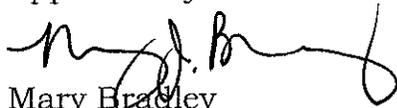
Staff recommends that the City Council approve the Ground Lease Agreement for 660 S. Fair Oaks, Sunnyvale, Attachment A, between the City of Sunnyvale and the County of Santa Clara, which allows for the assignment of the ground lease to MPHC and the pursuit of the development of approximately 125 units of senior affordable housing, and delegates authority to the City Manager to make minor modifications deemed necessary and advisable to the Ground Lease Agreement.

Reviewed by:



Hanson Hom, Director, Community Development Department
Prepared by: Suzanne Ise, Housing Officer

Approved by:



Mary Bradley
Finance Director

Approved by:



Amy Chan
City Manager

Attachments

- A. Draft Ground Lease Agreement

ATTACHMENT A

GROUND LEASE

- ***PHASE A***
- ***PHASE B***

GROUND LEASE

BETWEEN

**COUNTY OF SANTA CLARA
AS “LANDLORD”**

AND

**CITY OF SUNNYVALE
AS “TENANT”**

CONCERNING CERTAIN REAL PROPERTY LOCATED

IN THE

CITY OF SUNNYVALE, CA

[FAIR OAKS HOUSING PROJECT – PHASE A]

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EXHIBITS:

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EXHIBIT A-3	Legal Description
EXHIBIT B	Permitted Title Exceptions
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EXHIBIT D	Acknowledgement of Term Commencement Date
EXHIBIT E	Improvement Plan
SCHEDULE 1	Glossary of Terms
SCHEDULE 2	Milestones

GROUND LEASE

THIS GROUND LEASE (“**Lease**”) dated for reference purposes only as of December __, 2008, is entered into by and between the County of Santa Clara, a political subdivision of the State of California (“**Landlord**”) and City of Sunnyvale, a municipal corporation (“**Tenant**”).

RECITALS

A. The County of Santa Clara (“**County**”) is the owner of approximately 2.75 acres of real property located in the City of Sunnyvale, County of Santa Clara, California (the “**County Property**”), as generally reflected on the site plan attached hereto as Exhibit A-1. The northwest portion of the County Property is used for the Fair Oaks health clinic (“**Health Clinic**”), which was recently constructed by the County to replace a smaller health facility at the County Property. The former facility will be demolished and removed by the County.

B. The City of Sunnyvale (“**City**”) has requested that the County allow the City to construct, or cause to be constructed, approximately 124 units of senior affordable housing (the “**Affordable Housing Project**”) on approximately 1.2 acres of the County Property.

C. It is anticipated that the Affordable Housing Project will be constructed in two concurrent phases, Phase A (comprised of approximately 74 units) and Phase B (comprised of approximately 50 units) as generally reflected on Exhibit A-2. This is the Lease for Phase A of the Affordable Housing Project. A ground lease for Phase B of the Affordable Housing Project, on an adjacent leased premises reflected on Exhibit A-2, will be executed by Landlord and Tenant concurrently herewith.

D. The Affordable Housing Project will be located in the area of the County Property that currently provides surface parking for the Health Clinic. Pursuant to this Lease, the City will construct, or cause to be constructed, a parking garage, adjacent to the Health Clinic, on the Landlord’s Retained Property (as defined in Section 102.3 below) to replace the surface parking that will be lost as a result of the development and operation of the Affordable Housing Project.

E. The City previously requested proposals from affordable housing developers and selected Mid-Peninsula Housing Coalition, a California non-profit corporation, as the developer of the Affordable Housing Project (the “**Developer**”). Pursuant to Government Code Section 25539.4, the County may, by a four-fifths vote, convey property directly to the City, so long as the property is not required for County purposes, and pursuant to Government Code Section 54221(e), the County may convey property directly to a developer for affordable housing.

F. The County Board of Supervisors has determined that (i) this Lease will result in economic and public benefit to the County; (ii) a reasonable expectation exists that future public need justifies retention of fee ownership of the property leased hereunder; and (iii) this Lease will not interfere with the use or development of the County’s Health Clinic.

ARTICLE 1

PREMISES

101 Lease of Premises. For and in consideration of the Rent and agreements hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises on the terms and conditions set forth below. This Lease is effective and binds the parties as of the date this Lease is signed on behalf of Landlord (“**Effective Date**”), as reflected on the Landlord’s signature page, notwithstanding that the Term Commencement Date will occur on the date described in Section 201.

102 Premises and Related Definitions.

102.1 “**Housing Improvements**” means all structures, parking, on-site utility installations, landscaping, amenities, fences and other housing improvements, including off-site improvements that support the housing, excluding the Parking Garage Improvements, pursuant to the Improvement Plan. It includes all Alterations located from time-to-time on the Premises. Landlord acknowledges and agrees that the Affordable Housing Project may be constructed concurrently or in two sequential phases, as long as at least half of the required number of affordable housing units are included in the first phase.

102.2 “**Initial Project Improvements**” means all buildings, structures, parking, utility installations, driveways, landscaping, amenities, fences and other improvements to be constructed pursuant to the Improvement Plan, and includes both the Housing Improvements and Parking Garage Improvements.

102.3 “**Landlord’s Retained Property**” means the portion of the County Property that is retained by the County and is not leased to the City for the Affordable Housing Project, which area is identified on Exhibit A-1.

102.4 “**Parking Garage Improvements**” means a parking structure comprised of at least 210 parking spaces, utility installations, driveways, landscaping and other improvements appurtenant and necessary to the parking structure to be constructed on the Landlord’s Retained Property, in the area identified on Exhibit A-2. The Parking Garage Improvements are generally depicted on the plans and specifications for the Parking Garage Improvements dated October 30, 2008 and prepared by Jon Worden Architects (“**Approved Preliminary Garage Plans**”), subject to County’s review as provided in Section 504.

102.5 “**Premises**” means the land that the Landlord leases to Tenant pursuant to this Lease, as identified in Exhibit A-2 hereto and legally described in Exhibit A-3 hereto, for Phase A of the Affordable Housing Project. Following the recordation of the parcel map pursuant to Section 510, the parties shall insert into Exhibit A-3 a legal description of the Premises referencing the recorded parcel map.

102.6 “**Project**” means the Premises together with the Housing Improvements located thereon.

102.7 “**REA**” means an Easement and Maintenance Agreement between the Landlord and Tenant for the Tenant’s use and shared maintenance of certain driveways and walkways on Landlord’s Retained Property. At a minimum, the driveways will provide ingress and egress for Landlord and Tenant (as well as their respective employees, representatives, agents, contractors, guests, invitees, tenants, and subtenants) from both Fair Oaks Avenue and Garland Avenue in the locations generally described in Exhibit A-2, which driveways shall be used only to serve the Health Clinic and Housing Improvements. The REA will be recorded against the County Property prior to the Term Commencement Date and shall burden and benefit the respective successors and assigns of Landlord and Tenant.

103 Possession. Landlord shall deliver to Tenant possession of the Premises on the Term Commencement Date (as defined in Section 201). Tenant may not commence construction of the Parking Garage Improvements or Housing Improvements unless and until the applicable pre-construction conditions of Section 503 are met. Landlord shall deliver possession of the Premises in the following condition:

(a) Landlord shall demolish and remove the former health clinic structure from the Premises, including the removal and disposal of the asbestos material and construction debris as referenced in the Phase I Environmental Report prepared by Ceres Associates dated April 2, 2008, Project # CA1884-1; and

(b) Landlord shall deliver title to the Premises subject only to the exceptions identified in Exhibit B of this Lease.

104 Definitions Glossary. A Glossary of the other defined terms in this Lease is attached hereto as Schedule 1.

ARTICLE 2

TERM OF LEASE

201 Term. The term of this Lease (the “**Term**”) shall commence upon thirty (30) days following Developer’s receipt of the building permits and other approvals required for the commencement of construction of the Housing Improvements (the “**Term Commencement Date**”) and shall expire at 11:59 p.m. on the last day of the month in which the eighty-fifth (85th) anniversary of the Term Commencement Date occurs (the “**Expiration Date**”), unless terminated earlier under any provision of this Lease. The expiration or sooner termination of the Term shall be referred to as “**Lease Termination.**”

202 Early Lease Termination Rights.

202.1 Landlord’s Right. If Tenant fails to submit a fully executed development and disposition agreement (“**DDA**”) within one hundred twenty (120) days following the Effective Date that will obligate the Developer (or an affiliated entity) to design, construct and operate the Housing Improvements, then the Landlord may, at any time until Tenant has completed the required act, serve Tenant with notice (the “**Notice of Late Performance**”) of such failure and Tenant shall have thirty (30) days from receipt of the Notice of Late Performance to perform. If Tenant submits a fully executed DDA within the thirty (30) days, the

County will withdraw its Notice of Late Performance. If Tenant fails to submit a fully executed DDA, Landlord may (but shall not be required to) terminate this Lease on thirty (30) days notice to Tenant. If Landlord properly exercises its option to terminate this Lease, Landlord is entitled to retain the First Base Rent Installment as consideration for having entered into this Lease and as compensation to Landlord for Tenant's failure to perform hereunder, and each party will be released of any further obligation hereunder except those that expressly survive. Notwithstanding anything to the contrary, Tenant's time to perform shall be extended by: (i) Landlord's failure to timely meet its obligations hereunder and (ii) Unavoidable Delays.

202.2 Tenant's Right.

(a) If Tenant fails to enter into a DDA with Developer (or an affiliated entity) for the Affordable Housing Project within one hundred twenty (120) days following the Effective Date, Tenant may deliver written notice to Landlord of Tenant's termination of Lease pursuant to this section on or before that date. If Tenant exercises its option to terminate this Lease, Landlord is entitled to retain the First Base Rent Installment as consideration for having entered into this Lease (as well as any reimbursement of review costs as provided in Section 504.1.3) and each party is relieved from further obligations hereunder except those that expressly survive Lease Termination. Tenant's termination rights under this Section 202.2 automatically expire and are of no further force or effect one hundred twenty (120) days after the Effective Date. Tenant's failure to deliver a termination notice within this required time period shall be deemed a waiver of any termination rights under this Section 202.2.

(b) The obligation to lease the Premises pursuant to this Lease is subject to, and conditioned upon, the City's approval of the Initial Project Improvements and completion of environmental review by the City, as Responsible Agency, pursuant to the California Environmental Quality Act ("**CEQA**") and the expiration of any appeal periods. The County acknowledges that the City's review and approval of the Initial Project Improvements will be independent of this Lease. If the foregoing conditions are not met within forty five days (45) days following the Effective Date, Tenant may deliver written notice to Landlord of Tenant's termination of Lease pursuant to this section on or before that date.

ARTICLE 3

RENT

301 Rent. Tenant's obligation to pay rent under this Lease shall consist of the following: (i) Base Rent in the amount of Six Hundred Seventy Thousand Two Hundred Dollars (\$670,200); (ii) one-half of the actual design and construction costs of the Parking Garage Improvements to be constructed by Tenant or Developer pursuant to Article 5 (which is estimated to be one-half of Five Million Fifty Thousand Dollars (\$5,050,000)) and (iii) Additional Rent (as defined in Section 302.1). The foregoing are collectively referred to as "**Rent.**" Tenant will pay the "**Base Rent**" in the following installments:

301.1 First Base Rent Installment. Within forty five (45) days following the Effective Date, Tenant will pay \$100,200 to Landlord for the County's demolition and removal

of the former health clinic structure on the Premises and delivery of the Premises in accordance with Section 103, which amount will be non-refundable to the Tenant.

301.2 Second Base Rent Installment. Tenant will pay \$270,000 upon the earlier of (i) thirty (30) calendar days after Tenant and Developer execute a DDA for the Affordable Housing Project or (ii) one (1) year from the Term Commencement Date, unless Landlord or Tenant earlier terminate this Lease pursuant to Section 202.

301.3 Third Base Rent Installment. Tenant will pay \$300,000 within thirty (30) calendar days after recorded financial commitments for construction of the Housing Improvements pursuant to this Lease.

302 Rent Definitions

302.1 “**Additional Rent**” means all sums, Impositions (as defined in Section 401 hereof), costs, expenses, and other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay (except for the Rent described in Section 301). Tenant’s obligation to pay Additional Rent shall begin to accrue on the Term Commencement Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Lease.

302.2 “**Lease Year**” means each calendar year during the Term, except if the Term commences on a date other than January 1, the first Lease Year shall be a partial calendar year commencing on the Term Commencement Date and ending on December 31 of that calendar year, and the last Lease Year shall be a partial calendar year commencing on January 1 and ending on the date of Lease Termination.

303 Place of Payment. Tenant shall pay all Rent to Landlord at the Office of the County Executive, 70 West Hedding Street, 11th Floor, San Jose, California 95110, unless Landlord instructs Tenant in writing to deliver payment to another address, or unless this Lease specifically provides another place for payment.

304 No Cost to Landlord: No Counterclaim, No Abatement. Except as otherwise expressly provided in this Lease, the Rent payable under this Lease shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Base Rent. Except as otherwise expressly provided in this Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

ARTICLE 4

TAXES, ASSESSMENTS AND OTHER CHARGES

401 Impositions. Tenant covenants and agrees to pay or cause to be paid from and after the Term Commencement Date all taxes, sewer taxes, excises, license and permit fees, assessments, water, sewer or other rate and charges, taxes and charges and other governmental charges, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever which have accrued or which thereafter accrue at any time during the

Term and are allocable to the time period occurring within the Term (including assessments for public improvements or benefits), which prior to or during the Term are laid, assessed, levied, or imposed upon or become due and payable and a lien upon (i) the Project or any part thereof; (ii) any personal property, equipment or other facility used in the operation of the Project; (iii) the rent or income received by Tenant from subtenants or licensees; (iv) any use or occupancy of the Project and of any rights, obligations, easements and franchises as may now or hereafter be appurtenant, or appertain to the use of the Project; or (v) this transaction or any document to which Tenant is a party creating or transferring an estate or interest in the Project, subject to the limitations on Tenant's Transfer contained herein (all of which are hereinafter referred to as "**Impositions**"). Notwithstanding anything in this Lease to the contrary, the term "Impositions" shall specifically exclude any franchise tax or transfer tax imposed on any document to which Landlord is a party (other than this Lease) creating or transferring an estate or interest in the County Property, any municipal, state or federal income taxes levied against Landlord, any income, profits or revenues tax, assessment or charge imposed upon the Rent received by Landlord under this Lease, any estate, gift, succession, inheritance or transfer taxes of Landlord, or any business and occupational tax attributed and imposed upon Landlord for work, business or income not related or attributable to the Premises. If, by law, any Imposition is payable, or may at the option of the taxpayer be paid, in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may pay the same together with any accrued interest on the unpaid balance in installments as the same respectively become due and before delinquency. Tenant shall pay all Impositions before the addition of any fine, penalty, interest or cost. Landlord shall have the right to recover, as Additional Rent, Impositions payable before or after Lease Termination to the extent they are allocable to periods occurring during the Term.

401.1 Additional, Substitute or New Impositions. "Impositions" also shall include any amounts arising from a change in the methods of taxation prevailing on the Term Commencement Date. In addition to, in lieu of or as a supplement to or a substitute for the whole or any part of the Impositions now levied, assessed or imposed on the Premises or the Project, if there shall be levied, assessed or imposed (i) a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise, on the rent received therefrom; (ii) a tax, assessment, levy (including, but not limited to any municipal, state or federal levy), imposition or charge measured by or based in whole or in part upon the imposed upon Landlord; or (iii) a license fee, tax or other similar charge measured by the Rent payable under this Lease, to the extent that such Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions. Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions.

401.2 Possessory Interest Tax. In accordance with the requirements of California Revenue and Taxation Code Section 107.6, Tenant is hereby informed that this Lease may create a possessory interest in Tenant in the Premises, that the possessory interest of Tenant may be subject to property taxation and that Tenant may be subject to the payment of property taxes levied on Tenant's possessory interest in the Premises. Any possessory interest tax shall be included in the definition of "Imposition." Tenant shall have the right to apply for an exemption from any or all of such Impositions, at Tenant's sole cost, and Landlord shall provide Tenant with such reasonable assistance and cooperation as Tenant may request in connection with its application for the exemption; provided, that such assistance and cooperation shall be at no cost to Landlord.

401.3 Separate Tax Parcel. Landlord shall cause the Premises to be segregated for tax purposes from the other real property owned by Landlord.

401.4 Change In Ownership. Tenant shall pay any increases in Impositions caused by any reassessment due to a “change in ownership” of Tenant’s rights, title and interest in and to the Premises and/or this Lease during the Term, as “change in ownership” is defined, from time-to-time, in the California Constitution or in the California Revenue and Taxation Code.

401.5 Tenant Right to Contest. Tenant may contest the legal validity or the amount of any Imposition through such proceedings as Tenant considers necessary or appropriate and Tenant may defer the payment thereof so long as such delay does not cause any delinquency or penalty to be assessed. In the event of any such contest, Tenant shall protect, defend and indemnify Landlord against all loss, cost, expense or damage resulting therefrom, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge or cause the Imposition to be paid or discharged. Landlord shall furnish such information as Tenant shall reasonably request in connection with any such contest provided that the information is otherwise available to the public.

401.6 Tenant Duty to File. As between the parties hereto, Tenant alone shall have the duty of attending to, making or filing any declaration, statement or report which may be provided or required by law as the basis of or in connection with the determination, equalization, reduction or payment of any and every Imposition which is to be borne or paid or which may become payable by Tenant under the provisions of this Section 401 and Landlord shall not be or become responsible to Tenant therefor, nor for the contents of any such declaration, statement or report.

401.7 Assessments. Tenant shall not cause or voluntarily agree to allow an assessment to attach to the Premises or the Affordable Housing Project after the Term Commencement Date. On Lease Termination Tenant shall pay any outstanding unpaid balance on any assessment that Tenant causes to attach to the Project. Landlord, at no cost to Landlord, agrees to cooperate with Tenant in connection with establishing any assessment payable during the Term which is reasonably necessary or helpful for the operation or improvement of the Project. Landlord shall not cause or voluntarily agree to allow an assessment to attach to the Premises or the Project after the Term Commencement Date without the prior consent of Tenant, which Tenant may withhold in its sole discretion.

402 Services. Tenant shall pay before delinquency all charges for gas, water, electricity, light, heat or power, telephone or other communication service, sewer, trash removal, cable and all other services or utilities used during the Term in, upon or about the Project by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenant or assignees. Tenant shall also obtain, or cause to be obtained, without cost to Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Project of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any service to and upon the Project.

ARTICLE 5

INITIAL PROJECT IMPROVEMENTS

501 Construction of Initial Project Improvements. Landlord is leasing the Premises to Tenant to enable Tenant to construct the Housing Improvements on the Premises and Parking Garage Improvements on the Landlord's Retained Property consistent with the Improvement Plan attached as Exhibit E. Tenant agrees to use commercially reasonable efforts to cause the Initial Project Improvements to be commenced following issuance of building permits and to pursue construction diligently to completion in accordance with the schedule attached hereto as Schedule 2, subject to Unavoidable Delays. Tenant acknowledges and agrees that it cannot commence construction of the Housing Improvements on the Premises until the Parking Garage Improvements have been completed and delivered to the County for use in connection with the Health Clinic.

502 General Construction Contractor Selection Procedures. Tenant shall select the general construction contractor(s) for the Initial Project Improvements, subject to Landlord's consent, which shall not be unreasonably withheld, delayed or conditioned. Landlord's objections to any proposed general construction contractor shall be limited to (i) the extent of relevant construction experience possessed by the proposed general construction contractor on similar projects of similar size and complexity; (ii) the claims history, including claims made against public owners, of a proposed general construction contractor; (iii) the history of any non-compliance with State Prevailing Wage Law obligations; (iv) the financial ability of the general construction contractor to undertake the Project; and (v) the bond capacity of the general construction contractor. Tenant shall be required to provide Landlord with the name of a proposed general construction contractor prior to notification by Tenant to the general contractor of its selection. Landlord shall register any objection or probable objection to a proposed general construction contractor within ten (10) business days after notification to Landlord by Tenant. The Tenant's contract with the general construction contractor will require the general construction contractor to carry insurance acceptable to Landlord, and the general construction contractor must comply with Landlord insurance requirements prior to the commencement of work on the Project. No Landlord consent to Tenant's selection of a general construction contractor shall constitute an approval of the contractor or of the contractor's work, or a waiver by Landlord of any claims that may accrue to Landlord against a contractor or subcontractor. Any review by Landlord is for Landlord's internal purposes only and cannot be relied upon by, or deemed for the benefit of, Tenant or any third party. Landlord acknowledges and agrees that Developer, as opposed to the City, will be contracting with the general construction contractor(s) for the construction of all Initial Project Improvements pursuant to this Lease.

503 Construction Standards.

503.1 General Construction Standards. Tenant shall require any general contractor working on the Initial Project Improvements to take all reasonably necessary measures to minimize any damage, disruption or inconvenience to Landlord and the Health Clinic caused by such work, and shall require the general contractor to institute an appropriate safety program to assure the safety and convenience of all affected persons. In particular, Tenant's construction activities shall be conducted in such a manner as not to unreasonably interfere with access to, or otherwise unreasonably impact the use of, the Health Clinic (including any utilities located in

the Premises servicing the Health Clinic). Tenant shall: (i) develop a mutually agreeable route for ingress and egress to and from the Property for all construction vehicles, (ii) ensure a minimum of 160 parking spaces that will be available for Health Clinic employees and visitors during construction of the Parking Garage Improvements, and (iii) prepare a construction phase site utilization plan that sets forth the means and methods for maintaining safe clinic operations during all phases of construction. Tenant shall repair, at its own cost and expense, any and all damage that Tenant's construction work causes to the Landlord's Retained Property or the shared access road. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Initial Project Improvements and the performance of Tenant's work. Dust, noise, surface water drainage and other effects of Tenant's work shall be controlled by Tenant as required by the conditions of approval of the Initial Project Improvements and applicable laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

503.2 Compliance with Construction Documents and Laws. Tenant shall construct, or cause to be constructed, all Initial Project Improvements in substantial compliance with any documents relating thereto which have been approved by Landlord and in compliance with all applicable local, state and federal laws and regulations. All permitting and approvals for the Parking Garage Improvements and Project shall be processed through the City (rather than the County), except that any approvals or permits necessary for the Parking Garage Improvements shall also be obtained from the County's Fire Marshal. As between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

503.3 Prevailing Wages. The Parking Garage Improvements are a public work within the meaning of Labor Code 1720 and subject to the requirements of Labor Code section 1771, et seq. The parties acknowledge that portions of the Housing Improvements may also be a public work, but may be exempt from such requirements under the terms of the Labor Code. Landlord makes no judgment or opinion in this regard.

503.4 Delivery of Bonds. Prior to commencement of construction and as a condition to commencing construction of the Parking Garage Improvements and Housing Improvements, Tenant shall deliver to Landlord original payment and performance bonds, naming Landlord as co-obligee, as described below.

503.4.1 Payment Bond. Payment bonds meeting the requirements of Civil Code 3247 issued by surety companies acceptable to Landlord, permitted to act as surety in California and licensed to do business in California, in an amount not less than one hundred percent (100%) of the total amount of the construction contracts between Tenant and its general contractor (the "**Construction Contract**") for the construction of the Parking Garage Improvements and the Housing Improvements, which bonds by their terms shall remain in full force and effect and Tenant shall maintain it in full force and effect until the entire cost of the

Parking Garage Improvements and Housing Improvements, as applicable, have been paid in full, the respective improvements are satisfactorily completed in accordance with the provisions of this Lease, all claims for labor, materials, equipment or power have been paid, and all periods during which stop notices or claims of lien(s) of any kind may attach to the County's Retained Property or the Project, as applicable, have expired. The bonds shall contain provisions as required by Landlord, including the following: (i) that it secures the completion of the proposed construction free from all liens and claims of contractors, subcontractors, mechanics, laborers and material suppliers; and (ii) that the construction work shall be completed by the general contractor, or on its default, the surety.

503.4.2 Performance Bond. Performance bonds issued by a surety company acceptable to Landlord, permitted to act as surety in California and licensed to do business in California, in an amount not less than one hundred (100%) of the total amount of the Construction Contract between Tenant and its general contractor for the Parking Garage Improvements and Housing Improvements, as applicable, insuring completion of such work for the amount stated in the Construction Contract, with provision for increases in the bonded amount equal to increases under the Construction Contract resulting from change orders so that the amount of the bond will, at all times, be at least equal to the Construction Contract amount, as increased from time-to-time. The bond shall contain provisions as required by Landlord including a provision that the construction work shall be completed by the general contractor, or on its default, the surety.

503.5 Bonding Future Improvements. With respect to the construction, after completion of the Initial Project Improvements, of major improvements having a value in excess of \$1,000,000, at least ten (10) business days prior to the commencement of construction, Tenant shall provide to Landlord copies of payment and performance bonds, naming Landlord as co-obligee, conforming to the requirements in Section 503.4.

503.6 Submission of Cost Projections and General Contract. As a condition to Tenant's right to commence construction on the Premises, Tenant shall have delivered to Landlord:

503.6.1 Construction Contract, Development Documents, and Cost Estimates. Tenant's reasonable estimate of the total hard costs and total soft costs for construction of the Parking Garage Improvements or Housing Improvements, as applicable, plus an amount estimated by Tenant to be a reasonable contingency; and a copy of the Construction Contract for construction within Tenant's budgeted amount signed by a general contractor to whom Landlord has consented in accordance with Section 502, including the fully permitted and Landlord-approved construction documents; and

503.6.2 Financial Information and Insurance. Financial information, in form and content reasonably satisfactory to Landlord, evidencing sources of capital sufficient to demonstrate that Tenant has adequate financing or resources to pay for the total hard and soft costs of construction and will be able to complete the particular Initial Project Improvements pursuant to the terms of this Lease; and insurance as required by Article 8, including certificates showing the County as an additional insured.

504 Approval of Tenant's Plans.

504.1 Approval of Initial Project Improvement Plans and Specifications. Prior to commencement of construction of any phase of construction, Landlord must approve the Site Plan (as described below) for the applicable Initial Project Improvements. Once Landlord approves the Site Plan, Tenant may make material changes (“**Site Plan Material Changes**”) only with the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed.

504.1.2 Site Plan and Building Elevations Phase. Prior to submittal to the City for permit review for the Parking Garage Improvements or Housing Improvements, Tenant shall prepare and deliver to Landlord a site plan and exterior elevations (together, the “**Site Plan**”) for the respective Initial Project Improvements. Tenant shall regularly consult with Landlord during the preparation of the Site Plan. The Site Plan shall delineate exterior elevations, building layout and the location of building facilities, parking and internal driveways, onsite landscaping and signage, drainage, curbs, gutters and driveways. The Site Plan, at a minimum, shall be consistent with and integrate the Health Clinic’s drainage and circulation patterns and provide access (in a location acceptable to the County and governmental authorities having jurisdiction over same) to the County’s emergency generator serving the Health Clinic. Tenant acknowledges and agrees that the County will require continued access to the generator for purposes of fueling, operation, maintenance and compliance with BAAQMD requirements. The Site Plan exterior elevations shall clearly reflect exterior building design, including exterior wall and roofing materials and colors. Landlord shall have fifteen (15) days to approve or disapprove the Site Plan, which approval may not be unreasonably withheld, conditioned or delayed. If Landlord reasonably disapproves the Site Plan, Landlord shall deliver to Tenant a written notice of disapproval within the prescribed review period setting out the specific reasons for the disapproval and the changes required to gain Landlord’s approval, all in reasonable detail. Tenant and Landlord shall meet promptly thereafter to discuss possible remedies to Landlord’s disapproval and Tenant shall resubmit a revised Site Plan to Landlord for Landlord’s approval, and Landlord shall have fifteen (15) business days to review and to approve, or disapprove, the resubmittal. The process described above shall be followed until Landlord and Tenant agree on the Site Plan. If Landlord fails to approve or disapprove the Site Plan (or any required resubmittal) within the applicable time period, the submittals shall be deemed approved. Once the Site Plan is approved (or deemed approved), Landlord and Tenant shall indicate their approval in writing, describing with specificity the plans so approved. The parties acknowledge and agree that as Landlord approves of changes to the Site Plan, the term “Site Plan” shall mean those submittals last approved by Landlord.

504.1.3 Development Plans. Following Landlord’s approval of the Site Plan, Tenant shall prepare the design documents and Construction Documents for the applicable Initial Project Improvements (the “**Development Plans**”) that are consistent with the approved Site Plan. Tenant will provide the Development Plans for the Parking Garage Improvements to Landlord for review at the 75% stage of completion of the Construction Documents. Tenant will provide Landlord with all structural calculations for the Parking Garage Improvements and pay, as Additional Rent, County’s reasonable costs of peer review of the structural portions of the Development Plans for the Parking Garage Improvements by Biggs Cardosa, not to exceed the sum of Thirty Thousand Dollars (\$30,000). In addition, Landlord shall have thirty (30) days to

review the submitted Development Plans for (i) consistency with the Site Plan, (ii) in the case of the Housing Improvements, compatibility with the Health Clinic, number of housing units and location of Health Clinic surface parking, and (iii) in the case of the Parking Garage Improvements, compliance with the Approved Preliminary Garage Plans. If Landlord reasonably objects to any aspect of the Development Plans, Landlord shall deliver a written notice of disapproval within the prescribed review period setting out the changes required to gain Landlord's approval, all in reasonable detail. Tenant and Landlord shall meet promptly thereafter to discuss changes to bring the submitted Development Plans into compliance and Tenant shall resubmit revised Development Plans to Landlord for Landlord's reasonable approval, and Landlord shall have fifteen (15) business days to review and to approve, or disapprove, the re-submittal. The process described above shall be followed until Landlord has no reasonable objection. If Landlord fails to respond to the submitted Development Plans (or any required re-submittal) within the applicable time period, the submitted Development Plans shall be deemed approved.

504.1.4 Material Change. As used in this Lease, the term "**Material Change**" shall mean: (i) any change in building location, circulation, or grading plan that is inconsistent with the approved Site Plan; (ii) a significant change in the elevations, architectural style or architectural detail of the exterior of the improvements from an earlier approved iteration of the Development Plan; (iii) any change in the exterior colors (to the extent not previously approved by Landlord); (iv) any significant changes to the landscape plan; or (v) any change to the size or function of the Parking Garage Improvements.

504.2 Approval of Plans for Subsequent Alterations and Improvements. Except for the Initial Project Improvements and any Alterations for which Landlord's consent is not required hereunder, before making any other Alterations to the Housing Improvements, Tenant shall submit its plans and specifications to Landlord for approval, which approval will not be unreasonably withheld or delayed, and which shall be deemed given if Landlord does not provide a reasonably detailed statement of disapproval within fifteen (15) business days after receipt of Tenant's request for approval.

504.3 No Landlord Duty. Landlord's approval, review or modification of any plans, specifications or other construction documents with regard to the Initial Project Improvements (or any other work) is for Landlord's internal purposes only. Any Landlord review or approval specifically shall exclude review for the purpose of determining whether the reviewed documents contain any defects in the design, construction, or installation of improvements and Landlord shall have no liability or responsibility for any loss, damage, or injury arising out of or in any way connected with the design, construction, or installation of the any improvements on the Premises. Likewise, Landlord's review shall specifically exclude any review for purposes of determining whether the reviewed documents comply with laws, ordinances, rules or regulations applicable to the proposed work. By approving, reviewing, modifying or otherwise commenting on any of Tenant's plans, specification or other construction documents, Landlord shall not be deemed to make any express or implied warranty of the reviewed matters for any intended use or purpose. The scope and breadth of any review by Landlord is at Landlord's sole discretion and cannot be relied upon, or deemed for the benefit of, any other party.

505 Landlord's Cooperation. Landlord shall cooperate with and assist Tenant in every reasonable way in Tenant's efforts to obtain all governmental consents, approvals, permits or variances which may be required for the performance of any construction permitted under the terms of this Lease, including Landlord's joinder in any application for any such consent, approval, permit or variance where joinder therein by the owner of the Premises is required by law. Landlord's cooperation shall be at no cost to Tenant. The foregoing notwithstanding, Landlord shall not be required to join in any request or application for any change in the general plan designation or a rezoning of the Premises, unless necessary for the Project. In no event shall Landlord be required to join in any application, agree to any condition or sign any document which, in any way, will bind Landlord to perform, or agree not to perform, any act, expend any sums, dedicate any property or otherwise make any commitment with regard to Landlord's Retained Property, except as provided in Section 510 below or elsewhere in this Lease. Nothing contained in this Section or elsewhere in this Lease shall be deemed to limit Landlord's right (to the extent it could do so if it were not the Landlord), acting in its role as a governmental agency, to impose such restrictions or requirements on the issuance of consents, approvals, permits or variances, to make comment on applications and reports or otherwise to exercise its governmental authority.

505.1 Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Project without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In any site visits, Landlord shall comply with all safety rules and requirements of the contractor.

505.2 Pre-construction Meetings. Prior to beginning construction, Tenant shall arrange one or more meetings among Landlord, Tenant, the general contractor and Tenant's other construction professionals and consultants as Landlord shall reasonably request be included to discuss construction matters including construction hours, truck access, dust abatement, marshalling and storage areas and any other matters that may be of concern to Landlord relating to the Health Clinic.

506 Protection of Landlord. Nothing in this Lease shall be construed as constituting the request of the Landlord, express or implied, for the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Project or any part thereof for Landlord's account or benefit by any contractor, subcontractor, laborer or materialman. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises any notices which Landlord may deem necessary for the protection of Landlord and of the Premises and the Housing Improvements thereon from mechanics' liens or other claims. Tenant shall give Landlord ten (10) days' prior written notice of the commencement of any work to be done on the Project to enable Landlord to post such notices. In addition, Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection with the Premises and the improvements thereon.

507 Mechanics Liens. Although Landlord believes that California law prohibits any mechanics' lien from attaching to the Premises, nevertheless, Tenant shall keep the Premises, the

Landlord's Retained Property and the Initial Project Improvements free and clear of all claims for mechanics' liens and other liens on account of work done for Tenant or persons claiming under it. Tenant agrees to and shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or material suppliers or others for work performed or materials or supplies furnished to Tenant or persons claiming under it. In the event any such lien is recorded and is not removed or discharged within thirty (30) days, without reference to its validity Tenant shall, upon demand, furnish the bond described in California Civil Code Section 3143, or any other applicable or successor statute, which results in the removal of such lien.

508 Notice of Completion. Promptly upon completion of construction of each of the Parking Garage Improvements and the Housing Improvements, Tenant shall file or cause to be filed in the Official Records of the County of Santa Clara ("**Official Records**") a Notice of Completion executed by Tenant (the "**Notice of Completion**"). In addition, Tenant shall notify Landlord of completion of the Parking Garage Improvements and the Housing Improvements. Upon Landlord's reasonable determination that the applicable improvements have been completed in all material respects, Landlord shall execute and deliver a recordable Certificate of Completion (which shall not be unreasonably withheld, delayed or conditioned), in such form as reasonably requested by Tenant.

509 As-Is. Except for any representations or obligations set forth in this Lease, there are no warranties or representations, express or implied, by Landlord to Tenant and Tenant acknowledges that the execution of this Lease is and will be based solely upon Tenant's inspection and investigation of the Premises. Tenant acknowledges that Landlord has not made any representations or warranties other than as contained herein as to any matters concerning the Premises. Tenant independently has satisfied itself regarding the suitability of the Premises for Tenant's purposes including the suitability of the following characteristics of the Premises: topography, availability of utilities, general plan designation, zoning, soil, subsoil, presence or absence of fill, presence or absence of hazardous materials, the purposes for which the Premises or any part thereof may be used, drainage, flood zone designation, access to public roads, and applicable environmental laws, rules, or regulations. The failure on the part of the Tenant to procure in writing express warranties or representations regarding Premises characteristics shall constitute a conclusive admission that Tenant has relied on its investigation and judgment as to all matters relating to the Premises. Tenant represents that it has, prior to the execution of this Lease, made investigations and tests of the Premises, including inquiry from governmental agencies and quasigovernmental agencies having jurisdiction over the Premises, soils testing, tests and inspection for presence of hazardous materials and such other examination of the Premises as Tenant has deemed necessary to determine the condition of the Premises and that Tenant, except as specifically set out in this Lease, by execution hereof accepts the Premises in the condition and state in which they are, "as is."

510 Subdivision of Premises. Tenant shall not subdivide, by parcel map, subdivision map, or otherwise, the Premises or any portion thereof without the prior written consent of Landlord; provided, however, Landlord acknowledges and agrees that Tenant will process a parcel map (in a form subject to Landlord's approval) that: (i) merges the existing parcels at the County Property, (ii) removes the existing right of way related to Garland Avenue, (iii) relocates a water main easement crossing the Landlord's Retained Property, and (iv) dedicates an

emergency vehicle access that will serve the Health Clinic and Affordable Housing Project. Landlord shall cooperate with Tenant in processing the foregoing application and related documents.

511 As Built Plans and Assignment of Contracts.

511.1 Housing Improvements. Within sixty (60) days following completion of construction of any improvement, changes, alteration or repair on the Premises for which architectural drawings are required, Tenant shall deliver to Landlord one set of “As Built” drawings for such work.

511.2 Parking Garage Improvements. Within sixty (60) days following completion of construction of the Parking Garage Improvements, Tenant shall deliver to Landlord three sets of “As-Built” drawings for such work, all warranties and manuals. In addition, Tenant will fully and absolutely assign, or cause its Developer to assign, all interest in the architectural and construction contracts pursuant to which the Parking Garage Improvements were constructed in a fashion that will allow Landlord to pursue any defects in the Parking Garage Improvements that may arise subsequent to completion. Following the completion of the Parking Garage Improvements, Landlord shall be responsible for the operation, maintenance and use of the Parking Garage Improvements.

ARTICLE 6

USE OF PREMISES

601 Permitted Uses.

601.1 Permitted Use. Tenant acknowledges that Landlord has entered into this Lease and has agreed to the Rent structure contained herein in material reliance on Tenant’s Lease to permit only those uses described herein. Tenant may use the Premises and the Housing Improvements for the development, use and operation of at least sixty (60) units of senior affordable housing, together with ancillary service facilities, including business offices, parking, and common areas (collectively, the “**Permitted Use**”), and for no other purposes without the prior written consent of Landlord which Landlord may withhold in its sole discretion. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Landlord acknowledges and agrees that the City, for purposes of the California Community Redevelopment Law, the City’s Housing Element, the City’s Below Market Rate and Affordable Housing Ordinances, and/or all other applicable laws, shall be entitled to the full amount of credits available for the affordable housing units located at the Premises.

601.2 Landlord Audit. Landlord shall have the right, not more often than once per Lease Year, during usual business hours on usual business days, to audit Tenant’s books and records to confirm Tenant’s use of the Premises in accordance with Section 601.1 of this Lease upon providing Tenant with fifteen (15) business days prior written notice.

602 Operation. Tenant will operate the Project in a similar standard as similar projects operated by high quality affordable housing property managers.

603 Hazardous Materials. Landlord and Tenant each has undertaken investigations of the Premises in an attempt to determine if any Hazardous Materials (as defined below) is present on the Premises. Subject to Landlord's obligation to demolish and remove the prior health clinic structure and deliver possession of the Premises as provided in Section 103, Tenant assumes responsibility for the investigation and remediation, as and to the extent required by Environmental Laws, of all Hazardous Materials in, on or under the Premises or the Project that are discovered during the Term, except to the extent (i) any Hazardous Materials that originate from Landlord's Retained Property or (ii) any Hazardous Materials that are generated or caused by Landlord's acts or omissions and migrate to the Premises following the Term Commencement Date. Notwithstanding anything to the contrary in this Lease, the parties acknowledge and agree that a generator will be located at the southwest corner of the Property (in the location identified in Exhibit A-2) for the benefit of the Health Clinic. Landlord shall maintain the generator in compliance with applicable laws and shall retain all responsibility and obligations relating to the operation, maintenance and use of the generator.

603.1 Release of Landlord. Tenant hereby releases Landlord from all claims, liability, damages or costs, that Tenant may have at any time arising, directly or indirectly, from the presence, or alleged presence of Hazardous Materials in, on or under the Premises or the Project; provided, however, that this release excludes and shall not apply to (i) any Hazardous Materials that originate from Landlord's Retained Property or (ii) any Hazardous Materials that are generated or caused by Landlord's acts or omissions and migrate to the Premises following the Term Commencement Date. In connection herewith, Tenant waives the provisions of Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Initial of Tenant _____

603.2 Tenant to Comply with Environmental Laws. Except as otherwise expressly provided in this Lease, Tenant shall comply, at its sole cost, with all Environmental Laws relating to any Hazardous Materials in, on or under the Premises or the Project during the Term. Tenant shall become aware of the content of such Environmental Laws and all other laws regulating Hazardous Materials as enforced by, but not limited to, the City of Sunnyvale, the Bay Area Air Quality Management District, Santa Clara County Health Department, the Santa Clara Valley Water District, California Regional Water Quality Control Board, California Environmental Protection Agency, Department of Toxic Substances Control and all state and federal offices enforcing regulations concerning occupational safety and health. It shall be the sole obligation of Tenant to obtain any permits and approvals required pursuant to the Environmental Laws.

603.3 Landlord's Consent Required. Except for, and to the extent of, the type and quantities of Hazardous Materials specified in the Hazardous Materials Disclosure

Certificate approved by Landlord from time-to-time, Tenant shall not be entitled to use or store any Hazardous Materials on, in or about the Project without obtaining Landlord's prior written consent. If Landlord consents to any other usage or storage, then Tenant shall be permitted to use and/or store only those Hazardous Materials that are necessary to Tenant's business to the extent disclosed in the then applicable Hazardous Materials Disclosure Certificate, as amended if applicable, and then only to the extent expressly approved by Landlord in writing. Tenant's usage and storage shall be in compliance with Environmental Laws. Tenant agrees that any changes to the type and/or quantities of Hazardous Materials specified in the most recent Hazardous Materials Certificate may be implemented only with the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion. Tenant shall not be entitled nor permitted to install any tanks under, on or about the Project for the storage of Hazardous Materials without the prior written consent of Landlord, which may be given or withheld in Landlord's sole discretion. Landlord shall have the right at any time during the Term upon reasonable notice (i) to inspect the Project; (ii) to conduct tests and investigations to determine whether Tenant is in compliance with the provisions of this Section; and (iii) to request lists of all Hazardous Materials used, stored or otherwise located on, under or about the Project. If Landlord requests a list of Tenant's Hazardous Materials, Tenant shall provide a complete list within fifteen (15) days. The costs of such inspections, tests and investigations shall be borne solely by Tenant, if Landlord reasonably believes they are necessary. The rights granted to Landlord herein shall not create (a) a duty on Landlord's part to inspect, test, investigate, monitor or otherwise observe the Project and the activities of Tenant with respect to Hazardous Materials, including Tenant's operation, use and any remediation related thereto, or (b) liability on the part of Landlord for Tenant's use, storage, disposal or remediation or Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith. No consent requested of, and given by, Landlord pursuant to this Section shall be deemed to make Landlord a "controlling" party nor shall any Landlord consent result in Landlord assuming any responsibility for Hazardous Materials on the Project.

603.4 Tenant Indemnity. Tenant shall be solely responsible for and shall indemnify, protect, defend (by counsel reasonably approved by Landlord) and hold harmless Landlord and its agents and employees (collectively the "**Landlord Indemnitees**") from and against any and all claims, costs, penalties, fines, losses which arise during or after the Term as a result of the presence of Hazardous Materials in, on, under or about the Project due to Tenant or Tenant's employees, guests, invitees, agents, contractors or subtenants ("**Tenant's Parties**") during the Term, including any resulting from receipt, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, or disposal of Hazardous Materials in, upon or about the Project including (i) diminution in value of the Premises; (ii) damages from the loss or restriction on use of rentable or usable space or of any amenity of the Project; (iii) damages arising from any adverse impact on marketing of the Project; and (iv) sums paid in settlement of claims, attorneys' fees, consultants' fees, costs of investigation, damages, injuries, causes of action, judgments and expenses. This indemnification of the Landlord Indemnitees by Tenant includes any and all costs incurred in connection with any investigation of site conditions and any clean up, remediation, removal or restoration work required by and federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil, sub-soils, groundwater, equipment or elsewhere in, on, or under the Project due to Tenant or Tenant's Parties. This indemnification by Tenant shall survive the termination of this Lease.

603.5 Tenant Remediation. If contamination or deterioration exists of air, water or soil in, on, under or above the Project resulting in a level of contamination greater than the maximum levels established from time-to-time during the Term by any governmental authority having jurisdiction over such contamination, except to the extent of (i) any Hazardous Materials that originate from Landlord's Retained Property or (ii) any Hazardous Materials that are generated or caused by Landlord's acts or omissions, then Tenant shall promptly take any and all action necessary to clean up such contamination in the manner as required by law. Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in or about the Project, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Project, without first notifying the Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene, or otherwise appropriately assert and protect Landlord's interest with respect thereto. If Tenant fails to take such action, Landlord may, but shall not be obligated to, take such action. In such event, all costs incurred by Landlord with respect to such clean up activities shall be for the account of Tenant, except as otherwise provided herein.

603.6 Tenant Notice to Landlord. Tenant shall immediately provide Landlord with telephonic notice, which shall later be confirmed by written notice, of any and all accumulation, spillage, discharge, and disposal of Hazardous Materials onto or within the Project during the Term, and any injuries or damages resulting directly or indirectly there from following the Term Commencement Date. Further, Tenant shall deliver to Landlord a copy of each and every notice or order received from governmental agencies concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. In addition, Tenant shall immediately notify Landlord in writing of (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Environmental Laws; (ii) any claim made or threatened by any person against Tenant or the Project relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any local, state or federal environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Project, including any complaints, notices, warnings, or asserted violations relating in any way to the Project, or Tenant's use thereof. Tenant shall promptly deliver to Landlord copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Project. Landlord shall have the right to enter on the Project upon twenty-four (24) hours oral notice to Tenant for the purpose of inspecting the Project for compliance with all environmental requirements.

603.7 Storage of Hazardous Materials. Tenant shall store in appropriate leak-proof containers, or in any other manner approved or prescribed by law, any and all Hazardous Materials permitted within the Project pursuant to this Lease, which if discharged or emitted into the atmosphere, upon the ground or into or on any body of water will or may (i) pollute or contaminate the same, or (ii) adversely affect (a) the health, safety or welfare of persons, whether on the Project, or elsewhere, or (b) the condition, use or enjoyment of the Project, or any real or personal property whether on the Project or anywhere else, or (c) the Premises or any of the improvements thereto or thereon. There shall be no ponding or surface

storage whatsoever of Hazardous Materials on the Premises. The following substances may not be brought onto the Project: Arsines, Etching, Asbestos, Fluorocarbons, Chlorocarbons, Dioxin, (including dioxin precursors and intermediates) or anything contained in the California List of Extremely Hazardous Chemicals.

603.8 Tenant's Disposal of Hazardous Materials. Notwithstanding anything to the contrary contained in this Section 603, Tenant shall not dispose of any Hazardous Materials, regardless of the quantity of concentration, within the drains and plumbing facilities within the Project or other property of Landlord. The disposal of Hazardous Materials shall be in approved containers and removed from the Project only by duly licensed carriers. If Tenant becomes aware of or suspects the presence of any Hazardous Materials existing within or coming onto the Project, Tenant shall immediately give written notice of such condition to Landlord as required by California Health and Safety Code Section 25359.7.

603.9 Information/Fines. To the extent required by law, Tenant shall maintain a Material Safety Data Sheet for all Hazardous Materials brought into the Project. Such information shall be kept current at all times and shall be kept in a place accessible to Landlord at any time for inspection and in the event of an emergency. Tenant shall pay, prior to delinquency, all fees, taxes (including excise taxes) and fines that are charged upon or incident to Tenant's activities related to Hazardous Materials, and shall not allow such obligations to become a lien or charge against the Project or upon Landlord. Tenant shall deliver to Landlord true and correct copies of the following documents related to the handling, storage, transportation, disposal and emission of Hazardous Materials, concurrently with the receipt from or submission to a governmental agency:

Permits; approvals, reports and correspondence; storage and management plans, notice of violations of any Environmental Laws; plans relating to the installation of any storage tanks to be installed in, under or around the Project; and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks installed in, or under the Project.

603.10 Closure on Lease Termination. On or before the expiration of this Lease, Tenant shall take any and all action required to be taken under Environmental Laws in order (i) to surrender the Project to Landlord in a condition which would be completely free of any and all Hazardous Materials brought in, on or under the Project by Tenant or Tenant's Parties (excluding removal of the Housing Improvements); and (ii) close and remove any storage tanks installed with Landlord's prior written consent in, on or under the Project as required by Environmental Laws. Tenant shall submit to Landlord any and all closure plans required by law. Tenant shall complete its closure within a reasonable time after the delivery of its closure plan to Landlord, and in all events Tenant shall complete its closure and/or removal before Lease Termination. Tenant shall submit to Landlord prior to Lease Termination copies of appropriate documentation evidencing that all requirements of agencies with jurisdiction over Tenant's closure have been satisfactorily met.

603.11 Landlord's Right of Termination. Should Tenant breach any promise or fail to timely satisfy any of the conditions contained in this Section, Landlord may, for no

additional cause, terminate this Lease upon one hundred eighty (180) days written notice to Tenant, provided that in the event that during such notice period, Tenant commences remediation of such condition and diligently prosecutes such remediation this Lease shall not terminate.

603.12 Definitions.

603.12.1 “**Hazardous Materials**” means any hazardous, explosive or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term “**Hazardous Materials**” includes any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 15122.7, or is listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos; (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 30; (viii) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C., § 1317); (ix) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (x) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 41 U.S.C. § 9601 et seq., except for limited quantities of cleaning products, office supplies, construction materials and similar products typically used or stored at similar multi-family housing projects or required in connection with the routine operation and maintenance of the Premises, and in compliance with all applicable Environmental Laws.

603.12.2 “**Environmental Law**” means any present or future federal, state or local law, whether common law, statute, rule, regulation or ordinance, judgment, order, or other governmental restriction, guideline, listing or requirement, relating to the environment or any Hazardous Materials, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., and applicable provisions of the California Health and Safety Code and the California Water Code, all as heretofore or hereafter may be amended from time-to-time.

604 Compliance by Tenant with Laws and Governmental Regulations. Tenant, at its sole cost and expense, promptly shall comply with all present and future laws, statutes, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards, and offices (“**Applicable Laws**”) which are applicable to the Project or to the use or manner of use of the Project by the owners, tenants or occupants thereof, whether or not such law, ordinance, order, rule, regulation or requirement

shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over the streets adjacent to the Project, or onto or over other property contiguous or adjacent thereto. Tenant, at its sole cost and expense, shall have the right to contest, by appropriate proceedings diligently conducted in good faith in the name of Tenant, the validity or application of any Applicable Laws. If compliance with any Applicable Laws legally may be delayed pending the prosecution of any such proceeding without cost or penalty and without subjecting Landlord to any liability, civil or criminal, Tenant may delay compliance until the final determination of such proceeding.

605 Landlord Right to Use and Dispose of Retained Property. Tenant acknowledges that Landlord has made no representations regarding the use, development or operation of any other portion of the Landlord's Retained Property. Tenant acknowledges that this Lease shall not preclude Landlord from altering any currently proposed use for other parts of the Landlord's Retained Property, and Landlord may lease or sell all, or a portion of, the Landlord's Retained Property, all without any consultation with or liability to Tenant, so long as such use is reasonably compatible with the Project.

606 Compliance with Recorded Documents. Landlord and Tenant mutually agree to comply with all recorded documents encumbering the County Property, including the REA.

607 Nuisance. Tenant shall not use the Premises or the Project for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Project which would result in a nuisance or a violation of the laws and ordinances of the United States, State of California, County of Santa Clara and/or City of Sunnyvale and all agencies thereof as the same may be now or hereafter in force and effect.

ARTICLE 7 **SURRENDER AND RIGHT TO REMOVE**

701 Ownership During Term.

701.1 Housing Improvements. All Housing Improvements constructed or caused to be constructed on the Premises by Tenant, subject to the terms of this Lease, shall be and remain the property of Tenant during the Term.

701.2 Personal Property. Tenant shall provide all personal property reasonably required for normal operation of the Project to the standard required in this Lease. During the Term, all personal property, furnishings, fixtures and equipment installed by Tenant in, on or around the Project shall be the personal property of Tenant (the "**Personal Property**").

702 Ownership at Lease Termination.

702.1 Housing Improvements. Upon Lease Termination, the Housing Improvements shall unconditionally be and become the property solely of Landlord, without compensation to Tenant and this Lease shall operate as a conveyance and assignment thereof. Within thirty (30) days after Landlord's request following Lease Termination, Tenant shall sign and deliver to Landlord in recordable form a deed quitclaiming all Tenant's interest in the Housing Improvements to Landlord. Upon Lease Termination, Tenant shall surrender to

Landlord the Premises and the Housing Improvements in reasonably good condition and repair, reasonable wear and tear excepted and free from all monetary liens and encumbrances placed on the Premises by, or on behalf of, Tenant. “**Reasonable wear and tear**” when used in this Lease, shall mean wear and tear caused by aging, use and other conditions which occurs notwithstanding the application of standards for maintenance, repair and replacement typical of other similar affordable housing projects in the Project area of comparable age. Reasonable wear and tear is not intended, nor shall it be construed, to include items of neglected or deferred maintenance which would have or should have been attended to during the Term the required standards for maintenance, repair and replacement had been applied.

702.2 Personal Property. Any Personal Property of Tenant which remains on the Premises for thirty (30) days after the Lease Termination shall unconditionally be and become the property solely of Landlord without compensation to Tenant and this Lease shall operate as a conveyance and assignment thereof.

703 Condition of Project Improvements.

703.1 Condition of Project at Lease Termination. Landlord has entered this Lease in reliance on the fact that, at Lease Termination, Landlord will receive from Tenant the Housing Improvements in the condition required by Section 702. At any time during the last twenty four (24) months of the Term, Landlord may inspect the Housing Improvements to confirm that the Housing Improvements are being properly maintained as required herein. Following its inspection, Landlord may deliver to Tenant written notification of any portions of the Housing Improvements which Landlord has determined are not being properly maintained and Tenant shall promptly comply with the provisions of this Lease regarding such items; provided, the failure of Landlord to inspect or to notify Tenant of any default hereunder shall not be a waiver of Landlord’s right to enforce Tenant’s maintenance and repair obligations hereunder.

703.2 Environmental Report. Prior to the expiration of the Term, Landlord shall have the right, at its sole cost, to have an environmental report of the Project prepared that assesses the existence on the Project of Hazardous Materials.

704 Removal of Project Subtenants. Tenant shall deliver the Project, at Lease Termination, to Landlord free from all occupancies and tenancies.

705 Survival. The provisions of this Article 7 shall survive Lease Termination.

ARTICLE 8

INSURANCE

801 Insurance. Tenant, at its sole cost and expense, during the Term shall keep and maintain the following policies of insurance (provided, however, prior to a Transfer of the Lease to a Developer Entity pursuant to Section 1504.3, the City may satisfy the following insurance requirements pursuant to its self-insurance program):

801.1 Property Insurance. Property damage insurance covering all the Housing Improvements and Personal Property owned by Tenant located on or in, or constituting a part of, the Project, insuring against all risks of direct physical harm except those excluded by the broadest form of property insurance coverage in general use, from time-to-time. The property insurance shall cover, at a minimum, the perils of fire, extended coverage, vandalism and malicious mischief, flood (but only if the Premises is in a flood zone), demolition and debris removal costs and increased costs that maybe required by code or ordinance upgrades. The insurance coverage amount shall be equal to one hundred percent (100%) of the full replacement cost of the building improvements and Tenant's Personal Property. The insurance shall (a) be provided on an all risk property coverage form as may be customary and commercially available on reasonable terms for like properties in Santa Clara County from time-to-time during the term of this Lease and (b) cover explosion of steam and pressure boilers and similar apparatus located in the Project. The insurance required hereunder shall be in amounts sufficient to prevent Tenant from becoming a co-insurer under the terms of the applicable policies, and any deductibles or self insurance retentions for insurance required to be carried by Tenant pursuant to this Section shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld. The policies of insurance carried in accordance with this Section 801.1 shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement" and such other endorsements as may be required by any Approved Lender and shall name any holder of any Leasehold Encumbrance as a loss payee in form acceptable to the lender. In lieu of obtaining insurance from a third party insurer, Tenant may "self-insure" its personal property (but not its inventory, the Housing Improvements or third party property under Tenant's control) provided such self-insurance affords Landlord all protections that would be available from third party insurance as required hereunder.

801.1.1 Full Replacement Cost. Full replacement cost shall be determined from time-to-time, but not more frequently than once in any sixty (60) consecutive calendar months (except in the event of substantial Alterations to the Housing Improvements), upon the written request of Landlord, by written agreement of Landlord and Tenant, or if they cannot agree within thirty (30) days of such request, by one of the insurers, or at the option of Landlord, by an appraiser, architect or contractor reasonably acceptable to Landlord, Tenant and the insurer(s). A copy of any such determination shall promptly be sent to Landlord, Tenant and the insurer(s) upon receipt thereof, and the insurance maintained in this Section 801.1 shall be adjusted to 100% of the new full replacement cost.

801.1.2 Automatic Increase. If Landlord has not requested and obtained an adjustment in the full replacement cost within the prior five (5) year period, then the full replacement cost shall be deemed to have increased by the percentage increase in construction

costs in the region for the previous five (5) year period as reflected in the Marshall & Swift West Coast Cost Index (or a successor index reasonably acceptable to Landlord and Tenant) using the Trend Multiplier for the San Francisco Area (the “**Deemed Increase**”) and Tenant shall cause the insurance coverage required by this Section 801.1 to be increased in an amount equal to the Deemed Increase multiplied by the full replacement cost in effect immediately prior to the relevant date. Tenant shall notify Landlord promptly of each insurance coverage increase hereunder.

801.2 Liability Insurance. General liability or commercial general insurance on an “occurrence basis” covering at a minimum liability for bodily injury, physical damage to property, products and completed operations, explosion, collapse and underground hazards, other personal and business torts and contractual liability on, in or about the Premises or the Housing Improvements or any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways. At all times during the Term, the limits of liability under this Section 801.2 shall be not less than five million dollars (\$5,000,000) combined single limit per occurrence, and any deductibles or self insurance retentions for insurance required to be carried by Tenant pursuant to this Section shall be subject to Landlord’s prior written approval, which approval shall not be unreasonably withheld. At all times when there are construction operations on the Premises, Tenant shall cause the general contractor and each subcontractor to carry commercial liability insurance meeting requirements of this Section and of Section 801.5.

801.3 Worker’s Compensation Insurance. Worker’s compensation insurance, in the amount required under then applicable state law, covering Tenant’s employees, if any, at work in or upon the Project together with employees liability insurance for not less than one hundred thousand dollars (\$100,000) per occurrence for all employees engaged in services or operations under this Lease that includes Landlord, its governing board and employees as additional insureds (or a waiver of subrogation). Tenant shall require that any general construction contract entered into by Tenant with regard to the Initial Project Improvements include a contractual undertaking by the general contractor to provide worker’s compensation insurance for its employees engaged in construction of the Initial Project Improvements in an amount in compliance with applicable state law.

801.4 Builder’s Risk Insurance. At all times when there are construction operations on the Premises, Tenant shall maintain or cause the general contractor to maintain comprehensive “all risk” builder’s risk insurance, including vandalism and malicious mischief, covering all of the work of the contractor, including in progress improvements in place on the Premises, all materials and equipment stored at the Premises or an off site storage facility and furnished under contract, and all materials and equipment that are in the process of fabrication at the premises of any third party or that have been placed in due course of transit to the Premises or an offsite storage facility when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Tenant or its contractors or subcontractors, such insurance to be written on a completed value basis in an amount not less than the full estimated replacement value of the contractor’s work.

801.5 Miscellaneous Insurance and Endorsements. Tenant also shall carry the following insurance and/or endorsements:

- (a) Coverage against liability for bodily injury or property damage arising out of the use, by or on behalf of Tenant, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations called for under this Lease;
- (b) Cross liability endorsements;
- (c) Contractual liability, expressly including contractual indemnity liability assumed by Tenant under this Lease;
- (d) Broad form property damage liability;
- (e) Additional insured endorsements to the liability policies protecting Landlord, its supervisors, agents and employees;
- (f) Premises and operations including bodily injury, personal injury, death or property damage occurring upon, in or about the Premises or the Housing Improvements on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways; and
- (g) With regard to the policies of general liability and automobile liability, each shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

802 General Insurance Provisions. All policies of insurance provided for in this Article shall be provided under valid and enforceable policies, in such forms and amounts as required in this Lease, issued by insurers licensed to do business in the State of California and having a rating of A:5 or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Upon the Term Commencement Date and, thereafter, not fewer than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Article, Tenant shall deliver to Landlord two copies of a certificate of the insurer reasonably satisfactory to Landlord. Each certificate shall certify that coverage required in this Lease has been issued and remains in force, including all endorsements required by this Lease. If requested by Landlord, Tenant shall deliver within five (5) days following such request, certified, complete copies of the insurance policies and endorsements required in this Lease. Insurance policies to be provided under this Lease shall meet the following:

- (a) Each casualty and liability policy of insurance obtained pursuant to this Lease, other than workers compensation insurance, if any, shall contain endorsements which provide (i) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy; and (ii) a provision that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay any additional named insureds the amount of any loss sustained to which they otherwise would be entitled;
- (b) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or

materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Landlord;

(c) Each casualty and liability policy, other than workers compensation insurance, shall be written as a primary policy not contributing with and not in excess of coverage that Landlord may carry; and

(d) Each casualty and liability policy, other than workers compensation insurance, shall expressly provide that Landlord shall not be required to give notice of accidents or claims and that Landlord shall have no liability for premiums.

803 Blanket and Umbrella Policies. Any insurance provided for in this Article 8 may be placed by a policy or policies of blanket and/or excess liability (or umbrella) insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Project shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Lease.

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

805 Landlord Disclaimer. Landlord makes no warranty or representation that the forms or limits of coverage required hereunder are adequate to protect Tenant's property or to cover Tenant's obligations under this Lease. Tenant's obligations hereunder shall not be limited to the amount of insurance that Tenant is required to provide by this Article 8. Tenant's failure to deliver any insurance certificate or policy to Landlord, or Landlord's failure to request delivery of any certificate or policy, in no way be construed as a waiver of Tenant's obligation to provide the insurance coverage specified herein.

806 Adjustment of Coverage. If either party shall at any time believe that the limits or extent of coverage or deductibles with respect to any of the insurance required in this Article 8 then carried are either excessive or insufficient for a prudent owner and operator of a project like the Project, or if any required coverage is at any time not available, or not available at commercially reasonable rates, the parties shall endeavor to agree upon the proper, practicable and commercially reasonable limits and extent of coverage and deductibles for such insurance, and upon doing so shall execute an addendum to this Lease, letter agreement or other writing memorializing their agreement. If the parties at any time are unable to agree on the proper, practicable and commercially reasonable limits and extent of coverage and deductibles for such insurance, the matter(s) in dispute shall be resolved pursuant to the provisions of Section 1801.

ARTICLE 9

INDEMNIFICATION BY TENANT

Tenant shall indemnify and save harmless Landlord from and against any and all claims by or on behalf of any person, firm or corporation arising during the Term to the extent arising

from any conduct by any party on, management of or any work or thing whatsoever done in or on the Premises, Project or Housing Improvements, except to the extent caused by the negligence or misconduct of Landlord or Landlord's employees, guests, invitees, agents, contractors or subtenants. Further, Tenant shall indemnify and save Landlord harmless against and from any and all claims by or on behalf of any person, firm, or corporation to the extent arising during the Term from (i) any condition of any building, structure or improvement on the Premises, or of any passageways or spaces therein or appurtenant thereto (except as otherwise provided in the REA); (ii) Tenant's breach or default in the performance of any of its covenants or agreements under this Lease; (iii) any negligence of Tenant, or any of its agents, contractors, subcontractors, servants or employees related to the Premises or Housing Improvements; (iv) any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the Term in or on the Premises or the Housing Improvements or any passageways or spaces therein or appurtenant thereto (except as otherwise provided in the REA); or (v) from the furnishing of labor or materials by Tenant. Tenant's indemnification obligation shall include all costs, reasonable attorney's fees, expenses and liabilities incurred in defending Landlord against any such claim, action or proceeding, which defense Tenant shall provide with counsel reasonably satisfactory to Landlord. If an insurer under insurance required to be maintained by Tenant hereunder shall undertake to defend the Landlord under a reservation of rights with respect to ultimate coverage and Landlord shall reasonably deem it necessary to retain independent counsel with respect to such matter, Tenant shall pay the reasonable fees of such counsel. If Landlord elects under such circumstances to use its County Counsel's office to defend an indemnified claim, the billing rates of attorneys in the County Counsel office shall be deemed to be the same as then charged by private business litigation law firms of similar size in Santa Clara County that provide similar legal services.

ARTICLE 10

DAMAGE AND DESTRUCTION

1001 Damage or Destruction. If the Housing Improvements are damaged or destroyed, then except as otherwise provided in this Article 10, Tenant shall restore and rebuild the Housing Improvements as nearly as practicable to their condition immediately prior to such damage or destruction or with such Alterations as may be in conformity with the provisions of this Lease relating to Alterations. Lack of funds shall not be deemed a reasonable excuse for Tenant's failure to commence or complete the rebuilding, except as otherwise provided in this Article 10. Upon a damage or destruction, all insurance proceeds paid in respect of the damage or destruction shall be applied to the payment of the costs of the restoration required to be performed by Tenant pursuant to this Lease, and as otherwise provided in this Article 10. If Tenant's Leasehold Lender requires insurance proceeds be paid to it, Landlord and Tenant shall deliver such insurance proceeds to Tenant's leasehold lender. In the event the insurance proceeds are in excess of Five Hundred Thousand Dollars (\$500,000), the insurance proceeds shall be held in trust by a financial institution (the "**Insurance Trustee**") agreed upon by Landlord and Tenant, with the costs of such trust to be a first charge against the insurance proceeds. In the event the insurance proceeds are less than Five Hundred Thousand Dollars (\$500,000) they shall be paid to Tenant to be used for the renovation and/or reconstruction. After the completion of the restoration of the Housing Improvements, and expiration of all lien periods without any lien being filed, any remaining insurance proceeds shall be paid to Tenant and Tenant shall be

entitled to retain the same. If the funds deposited with the Insurance Trustee are insufficient to pay all costs and expenses of the restoration, Tenant shall indicate, in its notice of rebuilding, Tenant's source of funds to pay for costs in excess of the insurance proceeds. Before commencing the restoration, Tenant shall deposit with the Insurance Trustee the sum which, when added to the insurance proceeds, will be sufficient to pay all costs, direct and indirect, of rebuilding.

1002 Tenant Election to Restore. Tenant shall commence work on the restoration of any damage or destruction (as provided in Section 1004) within one hundred twenty (120) days following the damage or destruction, and shall diligently and continuously shall carry out the restoration to full completion as soon as practicable.

1002.1 Construction. The restoration by Tenant following any damage or destruction shall be in accordance with the provisions of Section 502, Section 503, Section 504, Section 505, Section 506, Section 507 and Section 508.

1002.2 Disbursement of Funds. The Insurance Trustee shall disburse funds only on a periodic basis approved by Landlord and Tenant and only upon receipt of invoices and other documentation, certified as correct by Tenant's architect, evidencing satisfactory completion of the work for which payment is requested ("**Payment Request**"). Further, the Insurance Trustee shall not disburse any funds unless the payment request is accompanied by (i) signed conditional waiver and release on progress payment in form complying with California law relating to all labor and materials described in the Payment Request and (ii) signed unconditional waiver and release upon progress payment in form complying with California law releasing all claims for labor and materials described in the immediately preceding Payment Request.

1003 Notice Required. In the event of material damage to or destruction of the Housing Improvements, Tenant shall promptly give Landlord notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article 10, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds \$500,000.

1004 Commencement of Restoration Defined. Tenant shall be deemed to have commenced the restoration process when it engages an architect and is diligently pursuing resolution of claims with Tenant's insurer.

1005 Tenant's Right to Terminate. Notwithstanding anything in this Article 10 to the contrary, so long as Tenant has maintained in effect the casualty insurance required by this Lease, Tenant shall have the right to terminate this Lease, effective as of the date of the casualty, upon written notice to Landlord (a "**Termination Notice**") in the event that any damage or destruction occurs and: (i) the reasonably estimated cost of the restoration work exceeds the available insurance proceeds by more than fifty percent (50%); (ii) then existing laws would not permit the repair, replacement, reconstruction and/or restoration of the Project to substantially the same condition and use as at the time immediately preceding the damage or destruction, or otherwise to a condition that would produce an economically feasible project of substantially the same use, consistent with all applicable requirements of this Lease; (iii) the time required to obtain all necessary governmental approvals required for the repair, replacement, reconstruction

and/or restoration of the Project in accordance with clause (ii) above, proceeding as promptly as reasonably practicable and using all commercially reasonable diligence, is reasonably estimated to exceed eighteen (18) months from the date of the damage or destruction; or (iv) the damage or destruction occurs in or after the first day of the 5th Lease Year prior to the expiration of the then Term (as it may have previously been extended by Tenant) and the cost of the restoration work (regardless of the availability of insurance proceeds) is reasonably estimated to exceed twenty five percent (25%) of the then applicable full replacement cost.

1006 Disbursement of Insurance Proceeds Upon Termination. If this Lease shall terminate following the occurrence of damage to or destruction of any Housing Improvements as provided in Section 1005 above, then all insurance proceeds recovered by Tenant or payable to Tenant on account of such damage or destruction under policies carried by Tenant (collectively, “Casualty Proceeds”), shall be distributed in the following order of priority:

(i) First, to the payment of all out of pocket third party costs and expenses, including reasonable attorneys’ fees, costs and disbursements, reasonably incurred in collecting the Casualty Proceeds;

(ii) Second, to the reimbursement of Tenant for any costs reasonably incurred by Tenant for demolition, restoration and removal work or emergency related work; and

(iii) Third, the balance of the Casualty Proceeds shall belong to Tenant provided Tenant shall be required to use a portion thereof to perform the obligations in Section 1007 if Tenant elects to terminate this Lease under Section 1005 (in the event that Landlord completes any of the work required by Section 1007, it shall be entitled to reimbursement for costs reasonably incurred).

1007 Removal of Debris. If this Lease shall terminate following the occurrence of damage to or destruction of the Housing Improvements as provided in Section 1005 above, Tenant shall have no obligation to restore or rebuild any Housing Improvements, but Tenant shall remove the debris and damaged portion of the Housing Improvements (including foundations) and restore the Premises or the applicable portion thereof to a neat, clean and safe condition, at Tenant’s cost and expense (but subject to reimbursement from the Casualty Proceeds).

1008 Obligation to Continue Paying Rent. Unless this Lease has been terminated pursuant to the provisions hereof, Tenant’s obligation to make payments of Additional Rent, and to perform all its other covenants and conditions shall not be affected by any damage or destruction of the Premises or Housing Improvements by any cause whatsoever, and Tenant hereby waives the provisions of any contrary statute or law now or hereafter in effect, including the provisions of California Civil Code Sections 1932, 1933(3) and (4) and 1942.

1009 Failure to Complete Restoration. Once Tenant commences restoration, it shall diligently pursue the work to completion.

1010 Disputes. In the event the parties are unable to agree upon: (a) whether the conditions provided in this Article 10 for the termination of this Lease have been satisfied; or

(b) the amount of proceeds to be paid to either party under this Article 10, the matter(s) in dispute shall be decided through the provisions of Section 1801 of this Lease.

1011 Survival. Landlord's and Tenant's rights and obligations under this Article 10, including their rights to receive proceeds, shall survive any termination of this Lease.

ARTICLE 11

RIGHT OF ENTRY

Upon the Effective Date of the Lease, Landlord hereby grants a right of entry to Tenant (as well as Tenant's employees, representatives, consultants and contractors) upon the Premises and the area of the County Property for the Parking Garage Improvements (as reflected on Exhibit A-2) for the following purposes: (i) performing intrusive tests or activities in preparation for construction of the Initial Project Improvements, (ii) relocating the existing water main line that currently runs through the northeast portion of the County Property, (iii) conducting inspections or other non-intrusive activities, and (iv) constructing the Parking Garage Improvements. Tenant shall provide the County with at least ten (10) business days written notice prior to commencing the activities described in (i) and (ii) above ("**ROE Notice**"). The ROE Notice shall include a reasonably detailed summary of the proposed activities, the schedule for performance of the activities, and a site plan showing the areas to be affected by the activities. County will provide written approval or disapproval of the ROE Notice, within five (5) business days of County's receipt of the ROE Notice, subject to County's modification of the proposed activities or schedule and subject to additional reasonable conditions of the Work. Following County's written approval, Tenant shall promptly notify County of any changes thereto. The foregoing right of entry shall be subject to all of the provisions of this Lease, including without limitation Section 503. The foregoing right of entry shall automatically terminate upon the completion of the Parking Garage Improvements and their acceptance by the County.

ARTICLE 12

REPAIRS, CHANGES, ALTERATIONS AND NEW CONSTRUCTION

1201 Repairs and Maintenance. Subject to the other provisions of this Lease, Tenant shall keep the Project in good operating order and condition, reasonable wear and tear excepted. The standard for maintenance and repair of the Project shall be the same as for other similar major affordable housing projects in Santa Clara County of similar size, and of comparable age. Tenant shall make all necessary repairs and perform all maintenance, interior and exterior, structural and non-structural, ordinary as well as extraordinary, whether contemplated or not contemplated at the time of signing of this Lease, to keep the Project to the standard described above in a well maintained, safe, clean and sanitary condition. The term "**repairs**" shall include replacements or renewals when reasonably necessary to satisfy the above standard, and all repairs made by Tenant shall be at least equal in quality and class to the original work. Tenant waives any rights created under any law now or hereafter in force to make repairs to the Project at Landlord's expense. From time-to-time during the Term, upon not less than 48 hours prior written notice from Landlord, Landlord may enter the Project during regular business hours, to determine if Tenant is in compliance with the requirements of this Article. If, following any

such inspection by Landlord, Landlord delivers notice of any deficiency to Tenant, Tenant shall promptly prepare and deliver to Landlord Tenant's proposed plan for remedying the indicated deficiencies. Landlord's failure to deliver, following any Landlord's inspection, any notice of deficiency to Tenant, shall not be deemed to be Landlord's approval of the then condition of the Project, nor Landlord's waiver of any default by Tenant under this Article 12.

1202 Changes and Alterations. Except as permitted by Section 1203 below, Tenant shall not make any changes, alterations, replacements or additions in, to or of the exterior of the Housing Improvements ("**Alterations**") without the prior written consent of Landlord, which Landlord shall not unreasonably withhold or delay, so long as all the following are complied with by Tenant:

- (a) Tenant shall pay all costs and expenses related to the Alterations;
- (b) The Alteration shall not result in a decrease in the value of the structural improvement to which it is being made;
- (c) The Alteration shall be for a use which is permitted hereunder and shall not be materially and adversely inconsistent with the Improvement Plan for the Premises;
- (d) Tenant shall obtain and pay for, all required permits and authorizations of any federal, state or municipal government or departments or subdivisions of any of them, having jurisdiction. Landlord shall join in the application for permits or authorizations whenever necessary. Landlord shall incur no liability or expense in connection with its cooperation and Tenant shall reimburse Landlord for Landlord's related reasonable attorneys' fees;
- (e) Any Alteration shall be made in a good and workmanlike manner and in accordance with all applicable permits and authorizations and building and zoning laws and with all other Applicable Laws;
- (f) During the period of construction of any Alterations, Tenant shall maintain or cause to be maintained applicable insurance described in Article 8 which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Project (including excavations, foundations and footings) under a broad form (or equivalent) builders' risk form; and
- (g) The provisions of Article 5 shall be met (to the extent applicable).

1203 Exceptions to Consent Requirement. The foregoing notwithstanding, Tenant shall not be required to obtain Landlord's prior written consent to any Alterations having a cost estimate (as defined in Section 503.6.1) of less than One Million Dollars (\$1,000,000) so long as all the following requirements are met:

- (a) The Alterations are non-structural;
- (b) The Alterations are not visible from the exterior of any building on the Premises; and

(c) All the provisions of Section 503.1, Section 503.2, and Section 503.3 shall be met (to the extent applicable).

Notwithstanding the foregoing, Tenant shall deliver to Landlord at least fifteen (15) days before commencement of any Alteration written notice of the proposed work, a general description of the proposed work and sufficient information to permit Landlord to post a notice of non-responsibility on the Premises. Tenant shall deliver to Landlord within sixty (60) days following completion of the work, three sets of “As Built” plans for all work for which architectural drawings are required.

1204 No Right to Demolish. Notwithstanding any other provisions of this Article 12 and except as otherwise permitted in Section 1007, Tenant shall have no right to demolish any Housing Improvement, once built, unless Tenant shall have received the prior written consent of Landlord, which Landlord may withhold in its discretion it being agreed that Landlord has entered into this Lease in material reliance on Tenant’s covenants to construct the Initial Project Improvements in accordance with the Improvement Plan and to operate and maintain the Housing Improvements in accordance with the provisions of this Lease. Any approved demolition and reconstruction shall be done in conformity with Sections 502 and 503 of this Lease, as applicable.

1205 Common Area Maintenance. Landlord and Tenant shall maintain their respective common areas on the County Property, such as entrance roads and driveways, as and to the extent required by the REA.

ARTICLE 13

EMINENT DOMAIN

1301 Eminent Domain.

1301.1 Definitions. The following definitions shall apply in construing the provisions of this Article 13:

1301.1.1 Award. “**Award**” means all compensation, damages or interest, or any combination thereof, paid or awarded for the Taking, whether pursuant to judgment, by agreement, or otherwise.

1301.1.2 Notice of Intended Taking. “**Notice of Intended Taking**” means any notice or notification on which a reasonably prudent person would rely and would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take.

1301.1.3 Partial Taking. “**Partial Taking**” means any Taking that is neither a Total Taking nor a Substantial Taking.

1301.1.4 Substantial Taking. “**Substantial Taking**” means the Taking of so much of the Project that the remaining portion thereof would not be economically and feasibly usable by Tenant for the then existing uses and purposes of the Project, but shall exclude a Temporary Taking.

1301.1.5 Taking. “**Taking**” means any taking of or damage to, including severance damage, all or any part of the Project or any interest therein by the exercise of the power of eminent domain, or by inverse condemnation, or a voluntary sale, transfer or conveyance under threat of condemnation in avoidance of the exercise of the power of eminent domain or while condemnation proceedings are pending.

1301.1.6 Temporary Taking. “**Temporary Taking**” means the Taking of any interest in the Project for a period of less than one (1) year.

1301.1.7 Total Taking. “**Total Taking**” means the Taking of the fee title to all, or substantially all, of the Project.

1301.2 Notice. The party receiving any notice of the kind specified below shall promptly give the other party written notice and a copy of any:

- (a) Notice of Intended Taking;
- (b) Service of any legal process relating to condemnation of all or any portion of the Project;
- (c) Notice in connection with any proceedings or negotiations with respect to such a condemnation; or
- (d) Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

Landlord and Tenant, and any of their respective secured lenders, each shall have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of their respective claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the mutual agreement of Landlord and Tenant and their secured lenders. Landlord and Tenant each agree to sign, acknowledge and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

1301.3 Total or Substantial Taking. In the event of a Total Taking or Substantial Taking, this Lease shall terminate, and Tenant’s interest in this Lease and all obligations of Tenant subsequently accruing hereunder shall cease, as of the first to occur of (i) the date of the vesting of title in the condemning authority or (ii) the date actual physical possession of all or part of the Project is taken by the condemning authority prior to the date of vesting of title. Tenant’s obligations to pay Additional Rent shall terminate as of such date.

1301.4 Award for Total or Substantial Taking. In the event of a Total Taking or Substantial Taking, the award shall be apportioned as follows:

FIRST: To Landlord and Tenant, payment for all out of pocket third party costs and expenses, including reasonable attorneys' fees, costs and disbursements, reasonably incurred in collecting the award;

SECOND: To Landlord the fair market value of its fee interest in the Premises (subject to Tenant's leasehold interest in the Premises) and Landlord's reversionary interest in the Housing Improvements;

THIRD: To Tenant that portion of the award attributable to the value of Tenant's leasehold interest in the Premises and fee interest in the Housing Improvements;

FOURTH: To Landlord any severance damages;

FIFTH: To Landlord, the residual value, if any, of the Housing Improvements valued as of the date the Term was scheduled to expire, and discounted to their present value; and

SIXTH: To Tenant, the entire balance of the award.

1301.5 Temporary Taking. In the event of a Temporary Taking that ends no later than one (1) year before the end of the Term, Tenant shall be entitled to the whole award, Landlord shall assign to Tenant all of Landlord's rights, title and interest in and to the entirety of the award, and this Lease shall remain in full force and effect.

1301.6 Partial Taking. In the event of a Partial Taking, this Lease shall remain in full force and effect, covering the remainder of the Premises, except that this Lease shall be deemed amended such that the definition of the "**Premises**" shall include only that portion of the land described in Exhibit A attached that is not taken, and the Base Rent shall be reduced to reflect, if any, the negative impact on Tenant's business operation as a result of such Partial Taking, which shall be determined with regard to the utility to Tenant of the area taken. In no event shall Tenant be entitled to any rent reduction for any Taking of a de minimis portion of the Premises or for road widening, landscaping or other similar purposes. Any Lease amendment and rental adjustment shall become effective as of the earlier of (a) the date of the vesting of title in the condemning authority of the portion of the Premises taken, or (b) the date actual physical possession of the portion of the Premises is taken by the condemning authority.

In the event of a Partial Taking, Tenant, at its sole cost and expense subject to (and only to the extent of) receipt of an award by Tenant from the Taking agency specifically earmarked for severance damages, and Tenant's offset against such specific award of all costs incurred in procuring such award, shall either (i) restore the Housing Improvements to a complete architectural unit, consistent with the requirements of this Lease, to the maximum extent feasible, or (ii) demolish and remove all or a portion of the Housing Improvements situated on the portion of the Premises not taken and restore such portion to a clean and neat condition. For the purposes of this Section 1301.6, "**de minimus**" is defined as a Taking of two percent (2%) or less of the Project.

1301.6.1 Award on Partial Taking. In the event of a Partial Taking, the award shall be applied first to the demolition and removal of Housing Improvements and restoration, repair and replacement by Tenant of the Premises and Housing Improvements that were not

taken, and the unexpended portion of the award, if any, shall be divided between Landlord and Tenant in the manner provided by Section 1301.4 above.

1301.6.2 Partial or Temporary Taking in Last Five Years. If a Partial Taking occurs during the last five (5) years of the Term and the reasonably estimated cost of reconstruction work exceeds ten percent (10%) of the replacement value of the Housing Improvements, or if a Temporary Taking occurs during the last five (5) years of the Term, Tenant shall have the right and option to treat the Partial Taking or Temporary Taking as a Substantial Taking by giving written notice thereof to Landlord no later than the earlier of: (a) the date of vesting of title in the condemning authority of the portion of the Premises taken, or (b) the date upon which the condemning authority takes physical possession of such portion of the Premises. If Tenant does give such notice the Partial Taking or Temporary Taking shall be considered as a Substantial Taking and the Taking shall be subject to the provisions of Section 1301.3 and Section 1301.4.

1302 Participation in Settlement Negotiations. Landlord and Tenant shall both have the right to participate in the negotiation, settlement or compromise of all awards, except for Temporary Taking awards. Tenant shall have the sole right to negotiate, settle and compromise any award for a Temporary Taking.

1303 Survival. Landlord's, Tenant's rights and obligations under this Article 13, including their rights to receive proceeds, shall survive any termination of this Lease.

ARTICLE 14

ENCUMBRANCES

1401 Definitions. The following terms shall have the following meanings:

1401.1 "Affordability Restrictions" means limitations imposed, from time-to-time, upon Tenant and/or upon the Premises or the Housing Improvements, upon any of the income levels of occupants of residential units in the Project or upon the rents that may be charged to occupants of residential units in the Project. Affordability Restrictions may be imposed in various contexts including, among others, pursuant to applicable Internal Revenue Code sections governing the tax credits, or by a lender in connection with the financing.

1401.2 "Leasehold Encumbrance" means any deed of trust, mortgage, assignment, security interest, lien or other encumbrance in or against Tenant's interest in this Lease, the Project and/or the Personal Property.

1401.3 "Leasehold Lender" means the holder or beneficiary under any Leasehold Encumbrance.

1401.4 "Loan" means a secured loan made to Tenant in connection with the Project.

1401.5 **“Loan Documents”** mean the loan agreement, promissory note, deed of trust, assignment, security agreement, Affordability Restrictions and/or other documents evidencing Tenant’s obligations with respect to any applicable Loan.

1401.6 **“Project Loans”** means all Loans made in connection with the initial financing and any Restructuring and secured by Leasehold Encumbrances as permitted below.

1402 Initial Financing; Restructuring. Tenant shall have the right to place Leasehold Encumbrances and Affordability Restrictions on the leasehold estate and the Housing Improvements without the consent of Landlord for purposes of financing the development of the Project and to refinance those loans. Prior to the commencement of construction of the Housing Improvements, Tenant will provide Landlord with the initial financing structure and pro forma operating statements, including the name of the proposed lender(s), and the amount, type and terms of the Project Loans. In the event Tenant has the opportunity to modify, restructure or replace the initial financing on terms that would result in an overall reduction in the debt service payable by the Project or other economic benefit to the Project (a **“Restructuring”**), Landlord shall cooperate with and assist Tenant in connection with the Restructuring; provided that Landlord’s reasonable out-of-pocket costs and expenses, including without limitation reasonable attorneys’ fees, shall be paid by Tenant. Without limiting the generality of the foregoing, Landlord shall consent to changes in this Lease, the applicable Loan Documents and/or any other instruments to which Landlord is a party, on reasonable terms and conditions to be negotiated with the prospective Lenders and/or tax credit investor reasonably and in good faith; provided, however, that Landlord shall not be obligated to agree to any changes that: (i) reduce the amount and terms of Rent payment (except for Project Loans), (ii) modify the Permitted Use hereunder, (iii) require subordination of Landlord’s fee interest in the Premises or otherwise diminish Landlord’s economic benefits under this Lease, (iv) increase the Term, (v) increase the liabilities of Landlord under this Lease; or (vi) impair the rights of Landlord under this Lease; and Landlord shall not be required to provide any legal opinions with regard to any Restructuring.

1403 Leasehold Encumbrances. Tenant shall have the right, at any time and from time-to-time during the Term, to procure one or more Loans and/or enter into any other arrangements which would have the effect of creating one or more Leasehold Encumbrances. Before entering into a Leasehold Encumbrance, Tenant shall give Landlord written notice and shall accompany the notice with a true and correct copy of the Leasehold Encumbrance and related Loan Documents. Any Leasehold Encumbrance shall be subject to the following terms and conditions:

1403.1 No Merger. So long as any Leasehold Encumbrance shall encumber Tenant’s leasehold estate, there shall be no merger of this Lease or any interest in this Lease, nor of the leasehold estate created hereby, with the fee estate in the Premises.

1403.2 Non-Subordination of Fee. Nothing in this Lease shall be construed as an agreement by Landlord to subordinate its fee interest in the Premises, its interest in any Rent or the Permitted Use. Except as expressly set forth in this Article 14 or elsewhere in this Lease, no Leasehold Encumbrance shall impair Landlord from enforcing its rights and remedies under this Lease or provided by law.

1404 Leasehold Lender Protections. Landlord and Tenant expressly agree that a Leasehold Lender making a Loan secured by a Leasehold Encumbrance shall have the following rights and protections:

1404.1 Notices. Landlord shall give the Leasehold Lender a duplicate copy of any and all notices Landlord may from time-to-time give to or serve on Tenant pursuant to this Lease, such duplicate copy to be given concurrently with the notice given to or served on Tenant, so long as Tenant or the Leasehold Lender shall at all times keep Landlord informed, in writing, of the name and mailing address of the Leasehold Lender and any changes in the Leasehold Lender's mailing address. Landlord shall have no liability to the Leasehold Lender for any failure to give any such notices to the Leasehold Lender. Any notices or other communications required or permitted by this or any other provision of this Lease or by law to be served on or given to the Leasehold Lender by Landlord may be delivered in the manner specified in Section 1805 below. Tenant shall deliver to Landlord, promptly after execution, true and complete copies of the Leasehold Encumbrance and all other documents given to evidence or secure the Loan, and any subsequent amendments, modifications or extensions thereof.

1404.2 Modification or Termination of Lease. Subject to the Leasehold Lender's prior consent and approval, Landlord and Tenant agree so long as a Leasehold Lender, or either of its successor or assigns holds a Leasehold Encumbrance and regulatory agreement encumbering the Premises, no voluntary termination of the Lease by Tenant, and no subordination, cancellation, surrender, of the Lease shall be effective without the prior written consent of the Leasehold Lender, which shall not be unreasonably withheld or delayed. Except for any termination of this Lease by Landlord due to an Event of Default in accordance with the provisions of this Section 1404, no merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of the Leasehold Lender. If Landlord transfers, conveys, sells, hypothecates or assigns its interest, or any portion thereof, in the Leased Premises, Landlord will require that any purchaser, assignee or transferee expressly assume all of the obligations of Landlord under the Lease by a written instrument recordable in the Official Records.

1404.3 Leasehold Lender Remedies. Landlord agrees that the Leasehold Lender shall have the right at any time during the Term to:

(a) do any act or thing required of Tenant under this Lease, and any such act or thing done and performed by such Leasehold Lender shall be as effective to prevent a termination of this Lease and a forfeiture of Tenant's rights under this Lease as if done by Tenant itself; and/or

(b) realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded at law or in equity, or under any Leasehold Encumbrance, and pursuant to such proceedings to: (i) transfer, convey or assign Tenant's leasehold interest to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted pursuant to court order or pursuant to a power of sale contained in the Leasehold Encumbrance; or (ii) acquire and succeed to the interest of Tenant under this Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted pursuant to

court order or pursuant to a power of sale contained in the Leasehold Encumbrance, or by assignment or other conveyance in lieu of foreclosure; or (iii) cause the subsequent transfer, conveyance or assignment by the Leasehold Lender of the leasehold estate to a third party (a “**Subsequent Transferee**”) after the Leasehold Lender has acquire such leasehold estate at such foreclosure sale or by assignment or other conveyance in lieu of foreclosure.

Foreclosure of a Leasehold Encumbrance or any sale thereunder, whether by judicial proceedings or pursuant to any power of sale contained therein, or any assignment or other conveyance in lieu of foreclosure, shall not require the consent of Landlord or constitute an Event of Default under this Lease. Upon any such foreclosure, sale, assignment or other conveyance, Landlord shall recognize Leasehold Lender, any grantee of a conveyance in lieu of foreclosure, or any foreclosure sale purchaser, or any Subsequent Transferee, as the Tenant hereunder.

1404.4 Cure of Tenant Default. After the expiration of the grace period given Tenant under the Lease to cure the default, Landlord shall not terminate the Lease on account of such default but shall give the Leasehold Lenders a written notice (a “**Termination Notice**”) that Tenant has failed to cure the default within the grace period and that, on account thereof, Landlord intends to terminate the Lease, which notice shall set a termination date not earlier than sixty (60) days after Leasehold Lender's receipt of the Termination Notice. The additional cure period afforded to the Leasehold Lenders and rights inherent therein, are personal to the respective Leasehold Lender and such rights, by the terms of this Lease, do not inure to the Tenant. No Termination Notice shall be effective to terminate the Lease if:

(a) Within sixty (60) days after receipt of the Termination Notice, a Leasehold Lender cures any non-monetary default which can be cured by payment or expenditure of money or without possession of the Leased Premises; or provides reasonable assurance and undertakings for the cure of such default. To cure, the Leasehold Lender may make any repair or improvement, do any other act or thing required of Tenant under the Lease, or do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions to prevent termination of the Lease. The Leasehold Lender and their agents and contractors will have full access to the Premises for purposes of accomplishing the curing of defaults under the Lease. Any of the foregoing done by a Leasehold Lender shall be as effective to prevent a termination of the Lease as the same would have been if done by Tenant; or

(b) The Leasehold Lender commences and diligently pursues to completion proceedings for foreclosure and sale under a Leasehold Mortgage or assignment or transfer in lieu of foreclosure consistent with the requirements of Section 1404.5. The Leasehold Lender shall not be required to perform any act which is not susceptible to performance by the Leasehold Lender, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which is Tenant's failure to pay any lien, charge or encumbrance which is junior in priority to the respective Lender's Leasehold mortgage, or to pay any amount owed under an indemnity of Landlord by Tenant based on an event which occurred before Leasehold Lender took possession of the Project. The foregoing provisions of this Section 1404.4 shall not be construed to impose any personal liability on the Leasehold Lender

for any failure to cure, or election not to cure, any monetary or non monetary default of Tenant. No action taken by a Leasehold Lender to enforce its rights under any Leasehold Encumbrance, including, without limitation, any actions taken to collect any amounts due and owing to the Leasehold Lender, or any action to appoint a receiver for the Project or to otherwise protect the security of the Leasehold Encumbrances, shall constitute or result in a breach or violation of the Lease.

1404.5 Leasehold Lender Right to Forestall Termination. Landlord and Tenant agree that the Leasehold Lender may forestall termination of this Lease by Landlord by commencing foreclosure proceedings or assignment or transfer in lieu of foreclosure (whether judicially or by exercise of a power of sale) within thirty (30) days after Landlord gives Leasehold Lender a notice of default, so long as: (i) Leasehold Lender, following commencement of such, diligently pursues to completion (subject to normal and customary postponements and compliance with any judicial or statutory stays or orders, including without limitation any stays or orders arising in connection with any bankruptcy or insolvency proceedings affecting Tenant, relating to the timing of or the right to conduct foreclosure or other lien enforcement proceedings); and (ii) Leasehold Lender performs all of the terms and conditions of this Lease requiring payment or expenditure of money by Tenant, including the payment of all unpaid Rent due hereunder, until the foreclosure proceedings, assignment or transfer in lieu are complete or are discharged by redemption, satisfaction, payment or conveyance of the leasehold estate to Leasehold Lender or to any other person or party.

1404.6 Leasehold Lender Liability. Subject to compliance with the provisions of Section 1404.5, the Leasehold Lender (or Lender Affiliate, if applicable) shall not be liable to Landlord as Transferee of Tenant's interest under this Lease unless and until such time as the Leasehold Lender (or Lender Affiliate, if applicable) acquires all rights of Tenant under this Lease through foreclosure or other proceedings in the nature of foreclosure, by deed or voluntary assignment in lieu thereof, or as a result of some other action or remedy provided by law or by any Leasehold Encumbrance. At no time shall the Leasehold Lender (or Lender Affiliate, if applicable) be liable for any breach or default by Tenant prior to the time the Leasehold Lender (or Lender Affiliate, if applicable) acquires all rights of Tenant hereunder. Subject to compliance with the provisions of Section 1504 relating to a subsequent Transfer by the Leasehold Lender (or Lender Affiliate, if applicable), in its capacity as a successor Tenant, of its interest in this Lease (provided that any provisions limiting a Transfer occurring prior to Project stabilization shall not apply to a Leasehold Lender which is financing construction of the Housing Improvements (or the Lender Affiliate of such Leasehold Lender, if applicable) but shall apply to any subsequent Transfer by the Transferee of such Leasehold Lender (or Lender Affiliate, if applicable)), the Leasehold Lender (or Lender Affiliate, if applicable) shall remain liable to Landlord for the obligations of the Tenant under this Lease only so long as the Leasehold Lender (or Lender Affiliate, if applicable) remains the owner of the leasehold estate, and following such Transfer by the Leasehold Lender (or Lender Affiliate, if applicable), the Leasehold Lender or Lender Affiliate shall have no further obligation or liability to Landlord except solely for obligations and liabilities arising or accruing prior to the effective date of the Transfer. In the event that the Leasehold Lender (or Lender Affiliate, if applicable) subsequently Transfers its interest under this Lease after acquiring all rights of Tenant hereunder and in connection with any such Transfer the Leasehold Lender takes back a mortgage, deed of trust, security agreement, lien or other encumbrance in or against the Tenant's interest in this Lease,

the Housing Improvements and/or the Personal Property to secure a portion of the purchase price payable to Leasehold Lender for such Transfer, then such mortgage, deed of trust, security agreement, lien or other encumbrance shall also constitute a Leasehold Encumbrance and the Leasehold Lender shall be entitled to the benefits of this Lease intended for the benefit of the holder of a Leasehold Encumbrance.

1404.7 Replacement Lease. If this Lease is terminated prior to the Expiration Date for any reason, including without limitation the termination by Landlord on account of an Event of Default or the rejection by a trustee of Tenant in bankruptcy or by Tenant as a debtor in possession, Landlord shall execute a new lease for the Premises with the Leasehold Lender (or Lender Affiliate, if applicable) as Tenant, if so requested by the Leasehold Lender, within sixty (60) days following the date of the termination, subject to the following:

(a) the new lease shall: (i) be for a term beginning on the date this Lease was so terminated and ending on the same date the Term of this Lease would have ended had this Lease not been terminated; (ii) provide for the payment of Rent at the same rate that would have been payable under this Lease during the remaining Term of this Lease had this Lease not been terminated; and (iii) otherwise contain the same terms and conditions as are contained in this Lease (except for any requirements or conditions which have been satisfied by Tenant prior to the termination);

(b) upon execution of the new lease by Landlord, the Leasehold Lender (or Lender Affiliate or Subsequent Transferee, if applicable) shall remedy, or agree in writing to remedy, as promptly as practicable, any defaults under this Lease committed by the former Tenant that can be remedied by a party other than the former Tenant;

(c) as between Landlord, Tenant and the Leasehold Lender (or Lender Affiliate or Subsequent Transferee, if applicable), and with respect to all third parties having actual or constructive notice of the terms of this Lease, the new lease shall have the same priority as this Lease, shall be subject to all Project Sub-Tenant Leases, and shall be assignable by the Leasehold Lender as provided in this Lease; and

(d) together with the execution and delivery of the new lease, Landlord shall confirm and acknowledge, by such means as is customary or may be reasonably required by a reputable title insurance company to insure the leasehold estate of Leasehold Lender (or Lender Affiliate, if applicable) created by the new lease and Leasehold Lender's (or Lender Affiliate's, if applicable) ownership of the Housing Improvements for the term of the new lease, that as between the Leasehold Lender (or Lender Affiliate, if applicable) and Landlord, and all persons claiming by, through or under Landlord (including without limitation the holder of any mortgage or other encumbrance against Landlord's fee interest in the Premises), the Leasehold Lender (or Lender Affiliate, if applicable) has title to the Housing Improvements and Personal Property for the term of the new lease; provided, however, that such confirmation and acknowledgment of title shall not negate or otherwise adversely affect Landlord's reversionary interest in the Project. Ownership of all Housing Improvements shall be deemed to have been transferred directly to the Leasehold Lender (or Lender Affiliate, if applicable) and the provisions of Section 702.1 causing such Housing Improvements to become

the property of Landlord in the event of a termination of this Lease shall be ineffective as applied to any such termination.

The provisions of this Section 1404.7 shall survive any termination of this Lease prior to the Expiration Date for any reason, for a period of sixty (60) days following the date of the termination, and shall constitute a separate agreement by Landlord for the benefit of and enforceable by the Leasehold Lender.

1404.8 Leasehold Lender Further Defined; Lender Affiliate. As used in this Lease, the term “**Leasehold Lender**” shall mean not only the entity that loaned money to Tenant and is named as beneficiary, mortgagee, assignee, secured party or security holder in any Leasehold Encumbrance, but also all subsequent assignees and holders of the security interest created by such instrument; and the term “**Lender Affiliate**” shall mean any partnership, limited liability company, corporation or other entity that controls, is controlled by, or is under common control with any Leasehold Lender.

1404.9 Cooperation; Amendment. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time-to-time any provision which may be reasonably requested by any Leasehold Lender in order to implement the provisions and intent of this Article 14; provided, however, that any such amendment shall not: (i) reduce the amount and terms of Rent payment (except for Project Loans), (ii) modify the Permitted Use hereunder, (iii) require subordination of Landlord’s fee interest in the Premises or otherwise diminish Landlord’s economic benefits under this Lease, (iv) increase the Term, (v) increase the liabilities of Landlord under this Lease; or (vi) impair the rights of Landlord under this Lease; and Landlord shall not be required to provide any legal opinions with regard to such loan.

1404.10 Notices to Landlord. Any Leasehold Encumbrance shall by its terms provide that the holder of the Leasehold Encumbrance shall give Landlord written notice of any default of Tenant under such Leasehold Encumbrance contemporaneously with the giving of such notice to Tenant; provided, however, that no failure by the Leasehold Lender to give such notice shall deprive it of any rights or benefits provided by this Section 1404 or elsewhere in this Lease or impair the Leasehold Lender’s ability to exercise its rights under the Loan Documents, and provided, further, that no legal consequences shall arise by reason of Leasehold Lender’s failure to give such notice to Landlord. Tenant shall give Landlord a copy of any notice of default received from any Leasehold Lender promptly after receipt thereof.

1404.11 Landlord’s Cure. Landlord agrees that if Landlord cures Tenant's failure to make any payment due under a Leasehold Encumbrance, it shall seek reimbursement of amounts so paid solely from Tenant and the Leasehold Lender shall have no obligation to pay such amounts to Landlord.

ARTICLE 15

ASSIGNMENT, TRANSFER, SUBLETTING

1501 Restrictions on Transfer by Tenant. Tenant acknowledges that the qualifications and identity of Tenant are of particular concern to Landlord (i) in view of the

importance of the development of the Premises to Landlord and the general welfare of the community; (ii) because of Landlord's desire that the Project be operated by an organization with demonstrated successful experience and success in developing affordable housing; (iii) because of the County's desire for the Project to be a first class affordable housing project; and (iv) in light of the County's desire for the operation on the Premises to be compatible with the County's adjacent Health Clinic use. Tenant further recognizes that the Landlord's approval of the proposed Developer's qualifications, reputation, experience and identity is a material consideration for Landlord in entering into this Lease with Tenant. Tenant acknowledges that the restrictions on Transfer contained in this Article 15 are reasonable. The provisions of this Article 15 apply to any subsequent Transfer involving Tenant's interest in the Project.

1502 Definition of Transfer. "Transfer" means any of the events described below, whether the same occur voluntarily, involuntarily, by operation of law, or otherwise:

1502.1 Transfer of Interest in the Premises or Project. Tenant's assignment, sublease, transfer, or conveyance of all, or any portion, of its interest in the Premises, the Project or this Lease.

1502.2 Encumbrance. Except for Project Loans and Affordability Restrictions in accordance with Article 14, Tenant's hypothecation or encumbrance of its interest in this Lease.

1503 No Transfer Without Consent. Except as otherwise provided in Section 1504.3, Tenant shall not make or permit any Transfer except with Landlord's prior written consent, which shall not be unreasonably withheld or delayed. Each Transfer shall comply with all requirements set forth elsewhere in this Lease. No voluntary or involuntary assignee or successor in interest of Tenant pursuant to a Transfer shall acquire any rights or powers under this Lease except as expressly set forth herein, and any Transfer without Landlord's consent shall constitute an Event of Default and shall be voidable at Landlord's option.

1504 Procedure.

1504.1 Transfer Request. With respect to each Transfer as to which Landlord's approval is required hereby, Tenant shall send to Landlord written request for Landlord's approval of the Transfer (a "Transfer Request") specifying the name and address of the proposed transferee and its legal composition (if applicable). Each Transfer Request shall be accompanied by all of the following:

(a) An audited financial statement (or if no audited financial statement is available, a reviewed financial statement) of the proposed transferee for the three (3) most recent calendar or fiscal years prepared in accordance with generally accepted accounting procedures by a nationally or regionally recognized certified public accounting firm, certified as true and correct by the proposed transferee, sufficiently current and detailed to permit evaluation of the proposed transferee's assets, liabilities and net worth;

(b) A description of the nature of the interest proposed to be transferred, the portion or portions of the Project affected by the Transfer, and the proposed effective date of such Transfer;

(c) A true and complete copy of the proposed Assumption Agreement described in Section 1510;

(d) A complete history of the proposed transferee describing its background, its current business operations and the background of the principals or personnel to be involved in the day to day operation of the Project and stating whether the proposed transferee ever filed for bankruptcy or had projects that were foreclosed;

(e) A description of any substantial litigation in which the transferee has been involved within the preceding sixty (60) months;

(f) A description of all consideration to be given on account of the Transfer; and

(g) Any such other information as reasonably requested by Landlord within ten (10) days following the receipt of the above information, in order for it to make an informed decision whether or not to approve or disapprove the Transfer.

1504.2 Approval of Landlord. Within thirty (30) days following receipt of all the information referred to in Section 1504.1, Landlord shall approve or disapprove a Transfer Request, and if Landlord disapproves the Transfer Request, it shall provide a reasonably detailed written statement of the reasons for the disapproval. If Landlord fails to give Tenant written notice of its approval or disapproval within the thirty (30) day period, Tenant may provide Landlord a second request for approval. If the second request for approval clearly states that under this Section 1504.2 Landlord's failure to respond in writing to Tenant on or before ten (10) days after Landlord's receipt of the second notice will be deemed approval of the Transfer Request, then if Landlord again fails to respond to Tenant in writing on or before the tenth (10th) day after Landlord's receipt of the second notice, Landlord will be deemed to have approved the Transfer Request. Tenant shall pay the reasonable fees and charges of any accountants, attorneys and other consultants hired by Landlord to review and assess any proposed transferee.

1504.3 Transfer to Developer. Notwithstanding anything to the contrary in this Lease, Landlord acknowledges and agrees that the City shall have the absolute right to assign the Lease to Developer or any entity that is controlled or owned by the Developer (collectively, a "**Developer Entity**"). Tenant shall not be required to obtain Landlord's consent to Tenant's assignment of the Lease to a Developer Entity; provided, however, the City shall not be fully released from its obligations under this Lease until a Notice of Completion for the Housing Improvements has been recorded pursuant to Section 508 and the Landlord has delivered to Tenant a Certificate of Completion as provided in Section 508. Upon the satisfaction of the foregoing sentence, the City shall automatically be released from all obligations under the Lease. In connection with the Transfer to a Developer Entity, at least thirty (30) days before the Transfer: (i) Tenant shall notify Landlord of the pending Transfer to a Developer Entity; (ii) Tenant shall provide Landlord with all information Landlord reasonably requests regarding the transferee entity; and (iii) Tenant shall deliver to Landlord an assignment and assumption agreement signed by Tenant and the transferee consistent with the foregoing. In the event that Developer is unable or unwilling to complete the Initial Project Improvements, the City may substitute the Developer, prior to the Term Commencement Date, with a comparable high-

quality affordable housing developer following Landlord's reasonable review and approval, in which case "Developer" hereunder shall mean such approved affordable housing developer.

1505 Limitations.

1505.1 Non-Transfer Period. Following the City's assignment of the Lease to a Developer Entity, in no event will Tenant request Landlord to approve any Transfer involving an assignment, transfer or conveyance (excluding a Leasehold Encumbrance) of all or a portion of Tenant's interest in the Premises, the Project or this Lease prior to the date that all of the following have occurred:

(a) All Initial Project Improvements shall be complete and a certificate(s) of occupancy shall be issued with respect to all Initial Project Improvements; and

(b) All costs and expenses with regard to the Initial Project Improvements shall be paid in full, all lien periods shall have expired and there shall be no liens on the Parking Garage Improvements, or any portion thereof

1505.2 No Relief from Liability. If Landlord consents to a Transfer, Tenant shall not be released from its liability for the performance of all Tenant's obligations under this Lease. If Tenant makes a Transfer for which Landlord's consent is not required (except as provided in Section 1504.3 above), Tenant shall not be released from its liability for the performance of all Tenant's obligations under this Lease.

1505.3 No Consent If Bankruptcy. In no event shall Landlord be required to consent, or be deemed to consent, to a Transfer to a party then subject to any proceedings under any insolvency, bankruptcy or similar laws.

1505.4 Consent Not a Waiver. Landlord's consent to any one Transfer shall not constitute a waiver of the provisions of this Article 15 with regard to any subsequent Transfer.

1505.5 Threshold Criteria for Transfer. Although Landlord may withhold its consent to a proposed Transfer on any reasonable basis, Landlord shall be deemed to be reasonable in withholding its consent to a proposed Transfer if any of the following are not satisfied:

(a) The proposed transferee shall have a reputation and demonstrated experience comparable to the transferor's reputation and experience operating and managing high quality affordable housing projects;

(b) Tenant shall have obtained any consents required from any of the Approved Lenders, and shall have complied fully with all their requirements and the requirements of any Loan Documents relating thereto;

(c) The use of the Project as an affordable housing project after the Transfer shall remain unchanged; and

(d) Tenant shall be in compliance with all Affordability Restrictions.

1506 Subletting. The limitations on Transfer contained in this Article 15 shall not apply to, nor shall Landlord's approval be required in connection with, the subletting of all or any portion of the Project pursuant to residential subleases, licenses or concessions (the "**Project Sub-Tenant Lease(s)**"), provided that all of the following requirements are satisfied:

- (a) If a residential Project Sub-Tenant Lease,
 - (i) the Project Sub-Tenant Lease is in compliance with any Affordability Restrictions; and
 - (ii) the sublease term does not extend beyond the Expiration Date and specifically states that it will expire no later than the Expiration Date of this Lease; and
- (b) If a commercial Project Subtenant Lease,
 - (i) the Project Subtenant Lease is in substantially the form that Landlord previously has approved (which approval will not be unreasonably withheld or delayed);
 - (ii) the uses permitted under the Project Subtenant Lease shall be only those uses compatible with the permitted use defined in Section 601 and with adjoining uses of the Landlord's Retained Property.
 - (iii) the sublease premises will not be used for any purpose that requires use of Landlord's Retained Property for parking; and
 - (iv) the sublease term does not extend beyond the Expiration Date, and specifically states that it will expire no later than the Expiration Date

1506.1 Delivery to Landlord. At Landlord's request, Tenant shall provide Landlord with copies of any Project Sub-Tenant Leases (except for subleases of single residential units) or of any amendment or assignment thereof.

1507 Indemnity. Tenant hereby agrees to indemnify and defend Landlord against, and hold it harmless from, any loss (including penalties, fines, reasonable counsel fees and disbursements) in connection with a claim or action by a transferee or other party which arises out of Tenant's actions or failure to act with respect to a Transfer including Tenant's breach or default under any agreement relating to the Transfer. Tenant also hereby agrees to indemnify and defend Landlord against, and hold it harmless from, any loss (including penalties, fines, reasonable counsel fees and disbursements) arising out of a claim or action by a sub-tenant or otherwise arising in connection with subletting. These indemnities shall not apply to any loss caused by Landlord's default under this Lease or Landlord's gross negligence or willful misconduct.

1508 Involuntary and Other Transfers. Without limiting any other restrictions on Transfer contained in this Lease, no interest of Tenant in this Lease, the Premises or the Housing Improvements shall be assignable in the following manner:

(a) Under an order of relief filed, or a plan of reorganization confirmed, for or concerning Tenant by a bankruptcy court of competent jurisdiction under the federal bankruptcy act or under the laws of the State of California, whereby any interest in this Lease, the Premises or the Housing Improvements is assigned to any party which does not qualify as an approved transferee pursuant to this Lease unless such order is filed or such plan is confirmed in connection with an involuntary proceeding brought against Tenant and Tenant reacquires such transferred interest within forty five days after the date such order is filed or such plan is confirmed;

(b) If Tenant assigns substantially all of its assets for the benefit of its creditors;

(c) If an order of attachment is issued by a court of competent jurisdiction, whereby any interest in this Lease, the Premises or the Housing Improvements or substantially all of Tenant's assets are attached by its creditors and such order of attachment is not stayed within forty five (45) days after the date it is issued; or

(d) If a lien against any interest of Tenant in this Lease, the Premises or the Housing Improvements, is foreclosed so that such interest is vested in a party other than Tenant, except as otherwise provided in this Lease.

1509 Assumption Agreement. No Transfer involving Tenant's assignment, transfer or conveyance of all or any portion of its interest in this Lease, whether an Approved Transfer or one to which Landlord has consented, shall be effective until Landlord shall have received an assumption agreement, executed by the transferor and the proposed transferee, in form reasonably acceptable to Landlord.

ARTICLE 16

BREACHES, REMEDIES AND TERMINATION

1601 Event of Default. Tenant shall be in default under this Lease on the occurrence of any of the following ("Events of Default"):

1601.1 Monetary Obligation. Tenant fails to pay any monetary obligation when due, and such failure shall continue for thirty (30) business days after Tenant receives Notice of Breach (as defined in Section 1602.1); or

1601.2 Failure to Commence Construction. Tenant fails to commence construction on the Initial Project Improvements in accordance with Schedule 2, subject to extension for Unavoidable Delays and notice and cure rights as provided for in Section 202.1; or

1601.3 Failure to Diligently Pursue Construction. Tenant fails to diligently and continuously pursue construction of the Initial Project Improvements to completion, subject to extension for Unavoidable Delays and such failure continues for thirty (30) days after Tenant receives Notice of Breach; provided, however, that if such failure to pursue construction cannot be cured within thirty (30) days, then it shall not be an Event of Default unless Tenant fails to commence within thirty (30) days after it receives the Notice of Breach to cure the same or,

thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence; or

1601.4 Bankruptcy. Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or Tenant admits in writing its inability to pay its debts generally as they become due; or

1601.5 Reorganization. A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, unless the order, judgment or decree is vacated within forty five (45) days after the first date of entry thereof, or any trustee receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof shall be appointed without the consent or acquiescence of Tenant, unless such appointment is vacated within forty-five (45) days after the first date of entry thereof, (which forty-five (45) day period shall be extended in all cases during any period Tenant is diligently pursuing a bona fide appeal); or

1601.6 Attachment. A writ of execution or attachment or any similar process shall be issued or levied against all or any part of the interest of Tenant in the Project, unless the execution, attachment or similar process is released, bonded, satisfied, or vacated or stayed within forty five days after its entry or levy, (which forty-five (45) day period shall be extended during any period in which Tenant is diligently pursuing a bona fide appeal); or

1601.7 Loans. Tenant shall be in default under any Loan secured by a Leasehold Encumbrance, and such default shall continue for ten (10) business days after Tenant receives Notice of Breach. Tenant shall be deemed to be in default under a Loan at any time that a lender shall have sent a written notice so stating or at any time that a lender records a Notice of Default in the Official Records; or

1601.8 Failure to Carry Insurance. Tenant fails to continuously maintain insurance coverage in accordance with Article 8 or fails to deliver a copy of a policy of insurance complying with the requirements of Article 8, and Tenant fails to remedy the default within fifteen (15) days after Tenant receives Notice of Breach; or

1601.9 Transfer. Tenant Transfers all or any portion of Tenant's interest in the Premises, the Housing Improvements or in this Lease in violation of the provisions of Article 15; or

1601.10 Non-Monetary Obligations. Tenant is in default in any other of its other promises, covenants or agreements contained herein (including Section 601) and Tenant has failed to cure such default within sixty (60) days after Tenant receives Notice of Breach;

provided, however, that if such a default with due diligence cannot be cured within sixty (60) days, then it shall not be an Event of Default unless Tenant fails to commence within sixty (60) days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence.

1602 Notice and Opportunity to Cure.

1602.1 Notice of Breach. A party shall deliver to the non-performing party a written request to perform or remedy (the “**Notice of Breach**”), stating clearly the nature of the obligation which such non-performing party has failed to perform. If Tenant is afforded a cure period for such failure, the Notice of Breach shall state the applicable cure period, if any, provided hereunder.

1602.2 Failure to Give Notice of Breach. The failure of a party to give, or delay in giving, Notice of Breach shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Delays by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any actions or proceedings which it may deem appropriate to protect, assert or enforce its rights or remedies.

1603 Remedies Upon Default.

1603.1 Landlord’s Remedies. If an Event of Default occurs (except as provided in Section 202.1), Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Lease to which Landlord may resort cumulatively or in the alternative:

1603.1.1 Landlord Right to Continue Lease. Landlord may elect to keep this Lease in effect and enforce by an action at law or in equity all of its rights and remedies under this Lease, including (i) the right to recover Rent (if any) as it comes due by appropriate legal action, and (ii) the right to make payments required of Tenant or perform Tenant’s obligations and be reimbursed by Tenant for the cost thereof with interest as provided in Section 1603.1.4. For so long as this Lease continues in effect, Landlord may enforce all of Landlord’s rights and remedies under this Lease, including the right to recover all Rent (if any) as it becomes due hereunder.

1603.1.2 Terminate. Landlord may terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date set forth for termination in such notice. Any termination under this Section 1603.1.2 shall not relieve Tenant from its obligation to pay sums then due Landlord or from any claim against Tenant for damage or rent previously accrued or then accruing. Upon Lease termination hereunder, in accordance with applicable law Landlord may re-enter the Project and take possession thereof, and, except as otherwise provided herein, remove all persons and property therefrom, and store such property at Tenant’s risk and for Tenant’s account, and Tenant shall have no further claim thereon or hereunder. In no event shall this Lease be treated as an asset of Tenant after any final adjudication in bankruptcy except at Landlord’s option so to treat the same but no trustee, receiver, or liquidator of Tenant shall have any right to disaffirm this Lease.

1603.1.3 No Deemed Termination. This Lease shall not terminate (except by an exercise of Landlord's right to terminate under Section 1603.1.2) unless Landlord, at Landlord's option, elects to terminate Tenant's right to possession or, at Landlord's further option, by the giving of any written notice (including any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate Tenant's right to possession. For the purposes of this Lease, the following shall not constitute termination of Tenant's right to possession: (i) acts of maintenance or preservation or efforts to relet the Project; or (ii) the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease; or (iii) any other action by Landlord intended to mitigate the adverse effects of any breach of this Lease by Tenant.

1603.1.4 Landlord Rights to Perform. Upon the occurrence and continuance of an Event of Default, and without waiving or releasing Tenant from any obligation of Tenant hereunder, Landlord may (but shall not be required to) make such payment or perform such act on Tenant's part to be made or performed under this Lease, or pay for and maintain such insurance coverage required under Article 8, and Landlord may enter the Project for such purpose and take all such action thereon as may be reasonably necessary therefor. All sums paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act (together with interest thereon at the Default Rate from the respective dates of Landlord's making of each such payment until paid) shall constitute Additional Rent which Tenant shall pay to Landlord within thirty (30) days after receipt of Landlord's demand therefor and documentation of costs incurred.

1603.2 Damages Upon Termination. If Landlord terminates this Lease, Landlord may recover from Tenant damages in an amount as set forth in California Civil Code Section 1951.2 ("**CC 1951.2**") as in effect on the Term Commencement Date. For purposes of computing damages pursuant to CC 1951.2, the term "rent" means the unpaid Base Rent (if any) and Additional Rent. Landlord's CC 1951.2 damages shall include:

- (a) The worth at the time of award of the unpaid rent which is due, owing and unpaid by Tenant to Landlord at the time of termination;
- (b) The worth at the time of award of the amount by which the unpaid rent which would have come due after termination until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;
- (c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss which Tenant proves could be reasonably avoided; and
- (d) All other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things are likely to result therefrom, including (i) expenses for cleaning, repairing and restoring the Project for re-letting; (ii) and all costs (including attorneys' fees) of repossession; and (iii) all costs of removing persons or property from the Project.

All computations of the worth at the time of award of amounts recoverable by Landlord under subparagraphs (a), (b), and (d) above shall be computed by allowing interest at a rate equal to the rate of interest most recently announced by Bank of America, N.T. & S.A., (or any successor bank) at its principal office in San Francisco as its “reference rate” serving as the basis upon which effective rates of interest are calculated for those transactions making reference thereto, but in no event in excess of the maximum rate of interest permitted under applicable law. The worth at the time of the award recoverable by Landlord under subparagraph (c) above shall be computed by discounting the amount otherwise recoverable by Landlord at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus 1%, or at such lower discount rate as may hereafter be specified by applicable California statute.

1603.3 Injunction. Upon the occurrence of an Event of Default, Landlord shall have the right to petition a court of competent jurisdiction for injunctive relief. Tenant’s failure for any reason to comply with an injunction ordered by a court shall constitute an Event of Default under this Lease.

1603.4 Right to Specific Performance. Upon the occurrence of an Event of Default, Landlord shall have the right to commence an action against Tenant for specific performance. Tenant’s failure, for any reason, to comply with specific performance ordered by a court shall constitute an Event of Default under this Lease.

1603.5 Right to Receiver. Following the occurrence of an Event of Default, if Tenant fails after receipt of a Notice of Breach to cure the default within any cure period set forth in the Notice of Breach, Landlord, at its option, may have a receiver appointed to take possession of Tenant’s interest in the Premises and Housing, Improvements with power in the receiver (i) to administer Tenant’s interest in the Project; (ii) to collect all funds available in connection with the operation of the Project; (iii) to perform all other acts consistent with Tenant’s obligations under this Lease, as the court deems proper; (iv) to apply the rents and any other sums received (less costs and expenses of operation and collection) to Rents (if any) due hereunder (and Landlord shall not be responsible to any person for the collection or non-collection of any such rents or income); (v) to take possession of the Tenant’s leasehold estate and the Project, manage and operate the Project and Tenant’s business thereon, and take possession of and use a Tenant’s books of accounts and financial records and its property managers or representatives related to the Project; and (vi) otherwise take any and all actions with respect to the Project as may be permitted under Applicable Law or this Lease.

1604 Remedies Cumulative. No remedy in this Article 16 shall be considered exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Landlord may exercise every power and remedy given by this Lease from time-to-time and as often as occasion may arise or as Landlord may deem expedient, subject to any limitations contained in this Lease.

1605 No Election of Remedies. The rights given in this Article 16 to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or non-observance thereof, or the exercise of any such right or of any other right or remedy hereunder, shall not in any way affect or impair or

toll the right or power of Landlord upon the conditions and subject to the provisions in this Lease to terminate Tenant's right of possession because of any Event of Default.

1606 Survival of Obligations. All rights of indemnification in this Lease shall survive Lease Termination. All obligations that accrue prior to Lease Termination likewise shall survive Lease Termination.

1607 No Cure After Termination. No receipt of money by Landlord from Tenant after the commencement of any suit or after final judgment for possession of the Project, shall renew, reinstate, continue or extend the right of Tenant to remain in possession of the Premises.

1608 Interest on Past Due Obligations; Late Charge. Any amount due from Tenant to Landlord hereunder which is not paid within five (5) business days after receipt of a Notice of Breach shall bear interest at the Default Rate (as defined in Section 1808.1) unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease. In addition, Tenant acknowledges that late payment by Tenant to Landlord of Base Rent or any other amount due Landlord from Tenant will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges. Further, Tenant acknowledges that Landlord intends to make commitments to third parties based on the timely payment by Tenant of sums due hereunder. Therefore, if any payment due from Tenant is not received by Landlord within thirty (30) days after receipt of a Notice of Breach, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue payment as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord.

1609 Landlord's Default. If Landlord fails to timely and properly perform any of its obligations under this Lease, and such failure continues for thirty (30) days after Landlord receives a Notice of Breach, Landlord shall be in default under this Lease ("**Landlord Default**"). If a default with due diligence cannot be cured within thirty (30) days, then there shall be a Landlord Default only if Landlord fails to commence within thirty (30) days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence. In the event of a Landlord Default, Tenant shall be entitled to any remedy it may have at law or in equity, including termination of this Lease or relief of payment of rent.

ARTICLE 17
RESERVED

ARTICLE 18

GENERAL PROVISIONS

1801 Dispute Resolution. The dispute resolution provisions set forth in this Section 1801 shall apply to all disputes between the parties relating in any way to this Lease, the Project or the Premises.

1801.1 Meet and Confer. The parties shall endeavor to resolve any disputes relating to this Lease through reasonable business like dispute resolution procedures without resort to litigation. Accordingly, if any dispute arises, either party may call a special meeting of the parties by written request specifying the nature of the matter to be addressed. The meeting shall be held at the offices of Landlord, and shall be attended by representatives of Landlord and Tenant who have authority to negotiate resolution of the dispute. The representatives shall confer in a good faith attempt to resolve the dispute until they either succeed or one or both parties concludes that the dispute will not be resolved through additional meetings.

1801.2 Mediation. If a matter in dispute is not resolved through the special meeting process, either party may initiate mediation by delivering written notice to the other. Both parties shall attend and participate in the mediation, which shall be non-binding and without prejudice to any other rights or remedies which any party may have. Unless the parties agree otherwise, the mediation proceedings shall be conducted in San Jose, California, by an independent mediator acceptable to both parties. If the parties are unable, within thirty (30) days after the notice initiating the mediation is delivered, to agree upon a mediator, then the mediator shall be chosen by the “**Selection Process**” described below. The costs of the mediation shall be shared equally by both parties to the mediation, except that each party shall pay the fees, costs and expenses of its own legal counsel and consultants in connection with the mediation. Any voluntary settlement reached as a result of the mediation process shall be reduced to writing.

1802 Selection Process. If the parties are unable to agree upon a mediator, then the party shall be selected in accordance with the following procedure. If the parties are unable to agree upon the mediator (the “**Neutral Party**”), as the case may be, within the time period designated for such agreement, then upon written request of either party, both parties shall submit in writing to the other party the names of its two candidates for Neutral Party. The two names shall be delivered to the other party within five (5) days after the date of the notice for submission of names. Each party shall, by written notice to the other party delivered within five (5) days after receipt of the two names, eliminate one of the names submitted by the other party. After the expiration of the elimination period, Landlord shall write the names remaining (one name, at least, submitted by each party) on identical papers and Landlord shall fold the papers so that the names are not visible. The names shall be placed in a receptacle and in the presence of representatives of both Landlord and Tenant, a representative of Tenant shall draw a name. The name on the paper selected shall be the Neutral Party for purposes of resolving the dispute.

1803 Estoppel Certificates.

1803.1 Tenant Estoppel Certificate. From time-to-time, within thirty (30) days after receipt of a written request by Landlord, Tenant shall deliver to Landlord a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there shall

have been modifications that the same is in full force and effect as modified and stating the modifications); (ii) the status of Tenant's contractual commitment with a developer for the Project; (iii) the dates to which the Rent and any charges have been paid; and (iv) stating whether or not, to the current actual knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge. The estoppel certificate may be relied upon by the receiving party, and any prospective lender, lessee or transferee.

1803.2 Landlord Estoppel Certificate. From time-to-time, within thirty (30) days after receipt of a written request by Tenant, Landlord shall deliver to Tenant a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications); (ii) the dates to which the Rent and any charges have been paid, (iii) stating whether or not, to the current actual knowledge of Landlord, Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Landlord may have knowledge, and (iv) such other reasonable matters as may be required by a lender or transferee. The estoppel certificate may be relied upon by the receiving party, and any prospective lender, lessee or transferee.

1804 Invalidity of Particular Provisions. If any term or provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

1805 Notices. Any notice or demand with respect to this Lease or with respect to the Premises, the Project or this Lease between Landlord and Tenant shall be in writing and shall not be effective for any purpose unless (i) personally served; (ii) delivered by delivery service; or (iii) mailed by certified or registered mail, postage prepaid, return receipt requested addressed as follows:

If to Landlord:

County of Santa Clara
70 West Hedding Street, 11th Floor
San Jose, California 95110
Attention: County Executive

with a copy to:

County of Santa Clara
70 West Hedding Street, 9th Floor
San Jose, California 95110
Attention: County Counsel

If to Tenant:

City Manager
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

with a copy to:

Office of the City Attorney
Attn: David Kahn
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

And to Leasehold Lenders as set forth in Article 14.

Notices given as described above shall be considered served:

- (a) If personally served, when delivered in accordance with the provisions of California Code of Civil Procedure for service of process on the type of entity to which the writing is addressed.
- (b) If served by delivery service, when signed for in the office of the party to whom directed.
- (c) If mailed, as required above, upon the first to occur of (i) receipt by the addressee as evidenced by a "return receipt" executed by a person in the office of addressee or (ii) on the date delivery is first attempted, as reflected by the records of the U.S. Postal Service.

Any party may change its address set forth above by notice given in the manner set forth above.

1806 Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon paying the Rent and all other charges under this Lease and observing and keeping all covenants, agreements and conditions of this Lease on its part to be observed and kept, shall have quiet enjoyment of the Premises during the term of this Lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease.

1807 Definitions. For purposes of this Lease, the following terms shall have the following meanings:

1807.1 Default Rate. "**Default Rate**" shall mean interest calculated at an annual rate equal to three percent (3%) in excess of the rate of interest most recently announced by Bank of America, NT & SA (or its successor bank) at its San Francisco office as its "reference rate" but in no event more than the maximum rate of interest permitted by law. If The Bank of America or its successor no longer issues a "reference rate," the most comparable rate of the largest bank with its corporate headquarters in New York shall be used.

1807.2 Landlord. “**Landlord**” shall mean the owner or owners at the time in question of the fee of the Premises, and in the event of any transfer or transfers of the title to such fee, Landlord herein named (and in case of any subsequent transfers or conveyances the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, provided that any funds in the hands of such Landlord at the time of such transfer, in which Tenant has an interest, shall be delivered to the transferee who shall then be obligated to hold and disburse the funds in accordance with the provisions of this Lease. The covenants and obligations contained in this Lease on the part of Landlord shall be binding upon Landlord or its successors and assigns, as the case may be, only during and in respect of their respective successive periods of ownership.

1807.3 Tenant. “**Tenant**” means the party described at the beginning of this Lease as “Tenant”.

1807.4 Unavoidable Delays. “**Unavoidable Delays**” means delays due to strikes, acts of God, inability to obtain labor, materials or utilities, governmental restrictions or moratoria except for those of Tenant, enemy action, earthquakes, civil commotion, war, failure of Landlord to comply with Lease provisions, which failure results in delay to Tenant, unavoidable casualty or similar causes beyond the reasonable control of Tenant, but financial inability of Tenant to perform shall not be an Unavoidable Delay.

1807.5 Including. “**Including**” when used in this Lease shall be construed to be accompanied with the words “without limitation” and any words following “including” shall be deemed to be illustrative only.

1808 Miscellaneous

1808.1 Construction of Language. In all cases the language in all parts of this Lease shall be construed according to its fair meaning and not strictly for or against Landlord or Tenant.

1808.2 Captions. The word titles contained herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as any part of this instrument.

1808.3 Successors and Assigns. Subject to the provisions hereof, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and wherever a reference in this Lease is made to either of the parties hereto such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such party, as if in every case so expressed.

1808.4 Memorandum of Lease. A Memorandum of Lease shall be signed by Landlord and Tenant within thirty (30) days following the Effective Date (“**Memorandum of Lease**”). The Memorandum of Lease shall be recorded in the Official Records by the Tenant. Tenant will pay all costs of recording, including any county documentary transfer tax or city conveyance tax. Tenant shall pay the cost of any title insurance it may require.

1808.5 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.

1808.6 Amendments in Writing. No amendment or modification hereof shall be effective for any purpose unless in writing signed by Landlord and Tenant.

1808.7 Attorney's Fees. Should either party hereto commence an action against the other to enforce any obligation contained herein, for equitable relief, for interpretation of the provisions of this Lease or otherwise arising under this Lease, the prevailing party shall be entitled to recover from the other party reasonable counsel fees and costs and necessary disbursements, as determined by the court having jurisdiction over the action. If Landlord elects to use its County Counsel's office to pursue any action hereunder, for purposes of determining the Landlord's attorneys' fees, the billing rates of members of the County Counsel office shall be deemed to be the same as then charged by private business litigation counsel in Santa Clara County law firms of similar size doing similar work.

1808.8 Brokers. Landlord represents that it has not engaged any broker or agent to represent Landlord in this transaction. Landlord will not pay any brokerage commission or finder's fee with regard to this Lease. Tenant represents that it has not engaged any broker or agent to represent Tenant in this transaction. Each party agrees to indemnify and hold the other harmless from and against any and all liabilities or expenses, including attorneys' fees and costs, arising out of, or in connection with claims made by any broker or individual for commissions or fees as a result of the acts of the indemnifying party.

1808.9 Indemnity Includes Defense Costs. In any case where one party is obligated under an express provision of this Lease to indemnify and to save the other party harmless from any damage or liability, the indemnity obligation shall be deemed to include defense of the indemnified party, such defense to be through legal counsel reasonably acceptable to the indemnified party.

1809 Holding Over. This Lease shall terminate without further notice upon expiration of the Term. If Tenant for any reason retains possession of the Project, or any part thereof, following Lease Termination, then Tenant shall pay to Landlord for each day of such retention for its use and occupancy of the Project or such portion thereof an amount equal to 125% of the amount of the total daily Rent in effect during the last month prior to the date of such Lease Termination. Tenant shall also indemnify and defend Landlord against and hold it harmless from any loss, liability and expense (including, but not limited to, attorneys' fees) resulting from delay by Tenant in surrendering the Project or any portion thereof, including any claims made by any succeeding tenant based on such delay. Landlord's acceptance of Rent following Lease Termination shall not constitute a renewal or extension of the Lease, and nothing contained in this section shall waive Landlord's right of re entry or any other right. Following Lease Termination, during a holdover period, Tenant shall be only a tenant at sufferance, whether or not Landlord accepts any payment from Tenant.

1810 Limitation on Liability. Landlord and Landlord's board members, employees and agents shall have no personal liability under this Lease, and Tenant shall look solely to the value of Landlord's interest in the Project for the satisfaction of any claim Tenant may have

against Landlord. The City's council members, employees and agents shall have no personal liability under this Lease. This limitation of personal liability shall be absolute and without any exception whatsoever.

1811 Non-Discrimination. That there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, operation, tenure, or enjoyment of the Project. The foregoing shall not prohibit the operation of a senior housing project.

1812 Disclaimer of Partnership. The relationship of the parties hereto is that of landlord and tenant, and it is expressly understood and agreed that Landlord does not as a result of this Lease in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise. This Lease is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or association as between Landlord and Tenant.

1813 Disclaimer of Lender/Borrower Relationship. The relationship of the parties hereto is that of landlord and tenant, and it is expressly understood and agreed that Landlord does not, as a result of this Lease, in any way nor for any purpose, become a lender to Tenant. It also is expressly understood that this Lease is not intended to, and shall not be construed to, create the relationship of lender and borrower.

1814 Entire Agreement. This Lease contains the entire agreement between the parties hereto relative to the leasing transaction covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Lease and are of no further force and effect.

1815 Landlord's Right to Enter the Premises. Landlord and its agents may enter the Premises or the Housing Improvements from time-to-time with reasonable notice (except for emergencies in which case no notice shall be required) to inspect the same, to post notices of nonresponsibility and similar notices, to show the Premises to interested parties such as prospective lenders and purchasers, to discharge Tenant's obligations pursuant to Landlord's right to do so as contained in this Lease; provided that in connection with such entry, Landlord shall use best efforts to minimize interference with Tenant.

1816 Authority to Execute Documents. By approval of this Lease, the Board of Supervisors of Santa Clara County has:

1816.1 Decision Making Authority. Granted to the County Executive or the designee of the County Executive the power and authority to make any decisions, grant any consents or provide extensions to the time periods described in this Lease. Any decision made by the County Executive or the designee of the County Executive shall be binding on the Landlord and any third party may rely on the County Executive's authority, or the authority of the designee of the County Executive, to so decide.

1816.2 Signature Authority. Granted to the County Executive, or the designee of the County Executive, the power and authority to sign on behalf of the Landlord (and bind Landlord by such signing) all documents contemplated by this Lease, including the Memorandum of Lease, any temporary or permanent easements, rights of entry, licenses, any dedications required by the City of Sunnyvale, and any consents, estoppels, Landlord waivers and any related documents.

1816.3 Asset and Economic Development Director Authority. Granted to the County Executive, or the designee of the County Executive, during the period from the time the Landlord signs this Lease until a Notice of Completion is signed and recorded with regard to the Initial Project Improvements, the power and authority to make all decisions and give all approvals (or to withhold such approvals on behalf of the County) contemplated by Article 5 of this Lease. The Landlord will be bound by any decisions, approvals or disapprovals of the County Executive or the designee of the County Executive, as described above.

1816.4 County Counsel Review. The Board of Supervisors' delegations of authority contained in Sections 1816.1 and 1816.2 are subject to review and approval by the County Counsel of all documentation as to form and legality.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease, through their officers or representatives thereunto duly authorized, as of the day and year first above written.

LANDLORD:

County of Santa Clara, a political subdivision
of the State of California

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Deputy County Counsel

TENANT:

City of Sunnyvale, a municipal corporation

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A-1

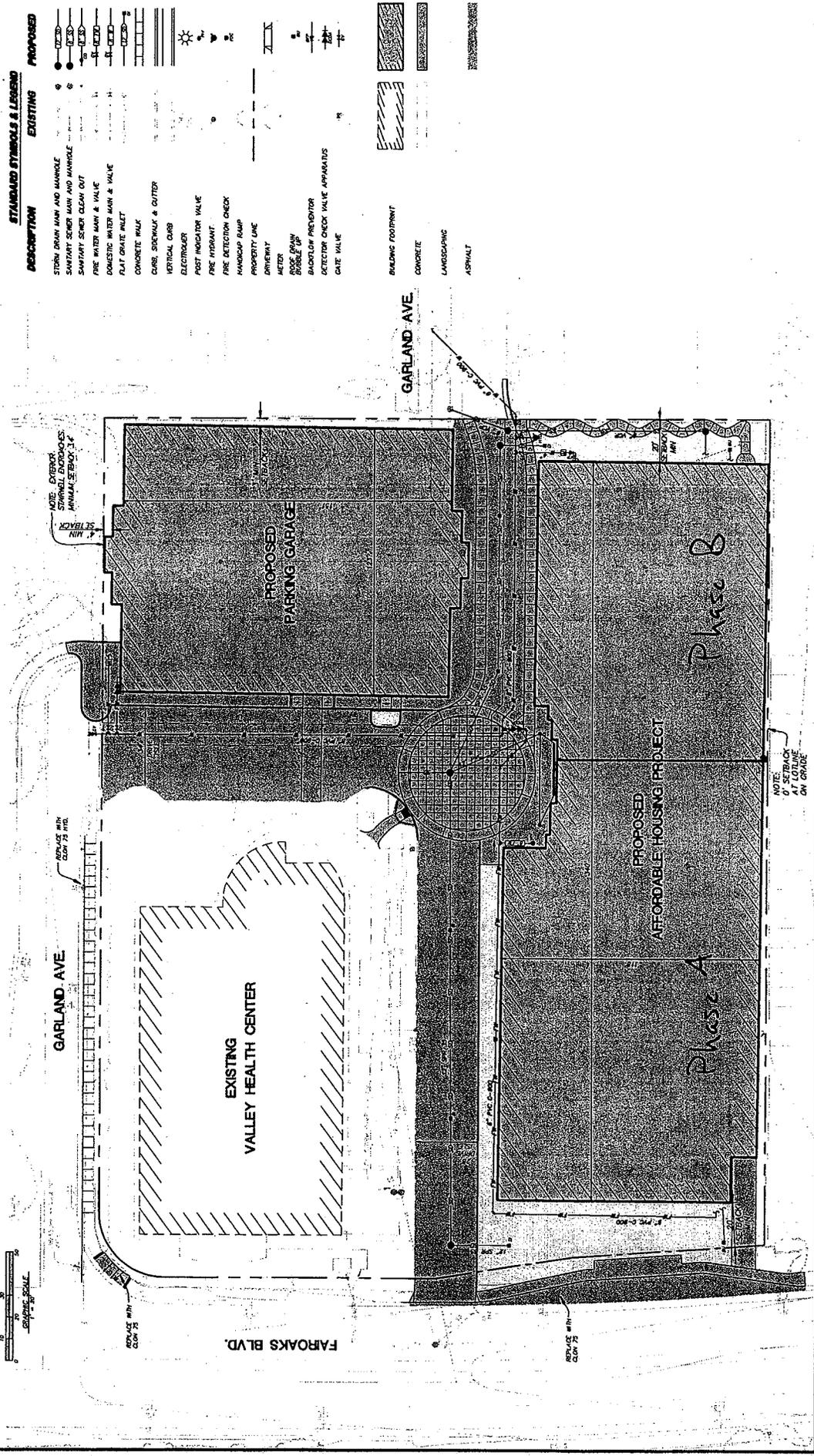
EXISTING SITE LAYOUT

[attached]

EXHIBIT A-2

**PRELIMINARY SITE PLAN
FOR INITIAL PROJECT IMPROVEMENTS**

[attached]



STANDARD SYMBOLS & LEGEND

DESCRIPTION	EXISTING	PROPOSED
STORM DRAIN MAIN AND MANHOLE		
SANITARY SEWER MAIN AND MANHOLE		
SANITARY SEWER CLEAN OUT		
FIRE WATER MAIN & VALVE		
DOMESTIC WATER MAIN & VALVE		
FLAT GRADE INLET		
CONCRETE PAVEMENT		
CURB, SIDEWALK & CUTTER		
VERTICAL CURB		
ELECTRICAL		
POST INDICATOR VALVE		
FIRE HYDRANT		
FIRE DETECTION CHECK		
MANHOLE RAMP		
PROPERTY LINE		
DRIVEWAY		
METER		
ROSE DRAW		
BOBBLE UP		
SHOULDER PREVENTOR		
DETECTOR CHECK VALVE APPARATUS		
GATE VALVE		

BUILDING FOOTPRINT	
CONCRETE	
LANDSCAPING	
ASPHALT	

MARK THOMAS & COMPANY, INC.
 Planning, Engineering, Architecture, and Landscaping Services
 3000 Wilshire Blvd., Suite 1000
 Los Angeles, CA 90010
 (213) 415-5172

APPROVED BY: CC
 DRAWN BY: MEW
 DATE: 10/27/08
 SCALE: AS NOTED
 PROJECT NO. 150-10010

NO.	DATE	BY	REVISIONS	CITY COUNCIL APPROVAL DATE

MARK THOMAS & COMPANY, INC.
 Planning, Engineering, Architecture, and Landscaping Services
 3000 Wilshire Blvd., Suite 1000
 Los Angeles, CA 90010
 (213) 415-5172

SUNNYVALE AFFORDABLE HOUSING PROJECT
 TENTATIVE PARCEL MAP
 600 SOUTH 14th STREET, SUNNYVALE, CALIFORNIA

SITE PLAN

2
of 3
SHEETS
150-009108

Draft

EXHIBIT A-3

**LEGAL DESCRIPTION OF PREMISES
(PHASE A)**

[attached]

EXHIBIT "A-3"
LEGAL DESCRIPTION
FOR PHASE A

Being a portion of Parcel A as said Parcel is shown on that certain Parcel Map, filed for record on May 6, 1982 in Book 500 of Maps at Page 6 in the County of Santa Clara, State of California and as corrected by Certificate of Correction recorded June 10, 1992 in Book G836, page 242, as Document No. 7386642 of Official Records, more particularly described as follows:

COMMENCING the southeasterly corner of Parcel B of said map, thence along the southerly line of said Parcels A and B, North 74°44'54" West, 152.80 feet to the **POINT OF BEGINNING**; thence continuing along said southerly line, North 74°44'54" West, 186.78 feet; thence leaving said southerly line the following eight (8) courses and distances: (1) North 15°15'06" East, 14.45 feet, (2) North 74°44'54" West 21.31 feet, (3) North 15°15'06" East, 113.25 feet, (4) South 74°45'16" East, 164.51 feet (6) South 15°14'04" West, 22.03 feet, (7) South 74°45'16" East, 43.52 feet and (8) South 15°15'06" West, 105.69 feet to the **POINT OF BEGINNING**.

CONTAINING: 25,301 square feet, more or less.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Date

Larry E. Johnson

L.S. No. 4998

Expiration Date: 12-31-2009

CITY OF SUNNYVALE
 COUNTY OF SANTA CLARA
 STATE OF CALIFORNIA

GARLAND AVENUE

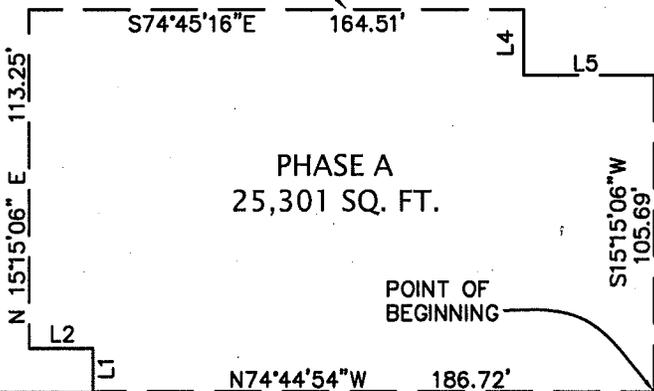
FAIROAKS AVENUE



PARCEL A
 (500 M 6)

PARCEL C
 (500 M 6)

LEASE PREMISE LIMITS



PHASE A
 25,301 SQ. FT.

PARCEL B
 (500 M 6)

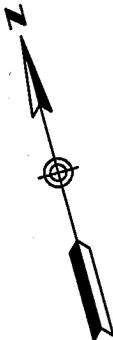
POINT OF BEGINNING

POINT OF COMMENCEMENT
 SOUTHEASTERLY
 CORNER OF
 PARCEL B

LEASE PREMISE LIMITS

LINE TABLE:

LINE	BEARING	DISTANCE
L1	N 15°15'06" E	14.45'
L2	N 74°44'54" W	21.31'
L3	S 06°07'19" W	40.46'
L4	N 15°14'04" E	22.03'
L5	S 74°45'16" E	43.52'



Scale 1" = 60 ft

PLAT TO ACCOMPANY DESCRIPTION OF
 PHASE A



MARK THOMAS & COMPANY, INC.
 Providing Engineering, Surveying, and Planning Services
 1000 Zanker Road
 San Jose, CA 95128
 (408) 453-8373

DESIGNED BY CCB
 CKD. BY LEJ
 DATE 10/06/08
 SCALE 1" = 60 FEET

APPROVED ON XX/XX/XX
 BY LARRY E. JOHNSON
 LS NO. 4998

JOB NO. 58-00608
 FILE NO.

SHEET 2
 OF 2

EXHIBIT B

PERMITTED TITLE EXCEPTIONS

General and special taxes and assessments, if any, for the fiscal year 2008-2009, a lien not yet due or payable.

The lien of supplement taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

EXHIBIT C

FORM OF MEMORANDUM OF LEASE

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

County of Santa Clara
Office of the County Counsel
70 West Hedding Street, 9th Floor
San Jose, CA 95110
Attention: Katherine Harasz
Deputy County Counsel

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("**Memorandum**") is made as of _____, 200_ by and between the County of Santa Clara ("**Landlord**") and the City of Sunnyvale ("**Tenant**").

1. Landlord has leased to Tenant certain improved real property described on Exhibit 1 hereto ("**Premises**"). The terms and conditions of this lease are more particularly set forth in an unrecorded Ground Lease (the "**Lease**") between Landlord and Tenant dated as of _____, which is incorporated herein by this reference thereto.

2. The term of the Lease ("**Lease Term**") is eight five (85) years, commencing thirty (30) days following receipt of building permits and other approvals required for the commencement of construction of the Housing Improvements (as defined in Section 102 of the Lease) on the Premises.

3. This Memorandum has been executed, acknowledged and recorded solely for the purpose of providing constructive notice of the Lease. If any inconsistency or conflict exists between the provisions of this Memorandum and the Lease, the terms, covenants and conditions of the Lease shall control.

IN WITNESS WHEREOF, the parties hereto have executed this memorandum as of the day and year first written above.

Tenant:

City of Sunnyvale, a municipal corporation

Approved as to Form:

By: _____

Its: _____

City Attorney

Landlord:

County of Santa Clara, a political
subdivision of the State of California

Approved as to Form and Legality:

By: _____

Its: _____

Deputy County Counsel

[SIGNATURES MUST BE ACKNOWLEDGED]

EXHIBIT 1
TO MEMORANDUM OF LEASE

[LEGAL DESCRIPTION OF PREMISES]

EXHIBIT D

ACKNOWLEDGE OF TERM COMMENCEMENT

This Acknowledge of Term Commencement is made on _____, 200_ by and between the County of Santa Clara, as Landlord, and _____, a _____, as Tenant, who agree as follows:

1. Landlord and City of Sunnyvale entered into a Ground Lease dated _____, 2008 (the "Lease"). Tenant is the assignee of the City of Sunnyvale.

2. Pursuant to Section 201 of the Lease, Landlord and Tenant agree to confirm the commencement date and expiration date of the Term of the Lease as follows:
 - a) _____, 20__, is the Term Commencement Date; and
 - b) _____, 20__, is the Expiration Date.

3. The provisions of this Confirmation of Term of Lease shall inure to the benefit of, or bind, as the case may require, the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this acknowledgement as of the day and year first written above.

Tenant:

By: _____

Its: _____

Landlord:

County of Santa Clara, a political
subdivision of the State of California

By: _____

Its: _____

Approved as to Form and Legality:

Deputy County Counsel

EXHIBIT E

IMPROVEMENT PLAN

[to be attached]

SCHEDULE 1
Glossary of Terms

This Glossary sets out certain Lease Terms and the Lease Section in which the definition is located:

<u>Terms</u>	<u>Section</u>
Additional Rent	302.1
Affordability Restrictions	1401.1
Alterations	1202
Applicable Laws	604
Casualty Proceeds	1006
Construction Contract	503.4.2
County	Recital A
County Property	Recital A
Deemed Increase	801.1.2
Default Rate	1807.1

Glossary, continued

<u>Terms</u>	<u>Section</u>
Development Plans	504.1.3
Effective Date	101
Environmental Law	603.12.2
Events of Default	1601
Expiration Date	201
Hazardous Material	603.12.1
Housing Improvements	102.1
Impositions	401
Including	1807.5
Initial Project Improvements	102.2
Insurance Trustee	1001
Landlord	Introduction
Landlord Default	1609
Landlord Indemnitees	603.4
Landlord's Retained Property	102.3
Lease	Introduction
Lease Termination	201

Glossary, continued

<u>Terms</u>	<u>Section</u>
Lease Year	302.2
Leasehold Encumbrance	1401.2
Leasehold Lender	1401.3
Lender Affiliate	1404.8
Loan	1401.4
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Parking Garage Improvements	102.4
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Premises	102.5
Project	102.6

Glossary, continued

<u>Terms</u>	<u>Section</u>
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Rent	301
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Temporary Taking	1301.1.6
Tenant	Introduction
Term	201
Term Commencement Date	201
Termination Notice	1005
Total Taking	1301.1.7
Transfer	1502
Transfer Request	1504.1

SCHEDULE 2
Milestones

[attached]

Development Milestones

Comments/Prerequisites

November, 2008	City Approves Ground Lease	
November, 2008	Housing Developer submits PD Combining District	
November, 2008	Housing Developer submits Water Line Relocation Permit	
January, 2009	City and Housing Developer to Execute DDA	To be executed within 120 days following Effective Date
January, 2009	Housing Developer to submit parking garage building plans to City for permits	
February, 2009	Water line relocation, record final map	
February, 2009	City to approve PD Combining District	
March, 2009	If temporary parking will be available in April - Housing Developer to apply for 9% tax credits	2.5 months to receive TCAC award letter; 5 months to pull housing permits
April, 2009	Temporary parking completed	
April, 2009	Begin parking garage construction	Approximately 6-7 months to construct parking garage
June, 2009	Submit Housing Plans for building permit	
October, 2009	If 9% awarded, record easement and maintenance agreement	
October, 2009	Parking garage completed	
October, 2009	If 9% credits awarded, secure permits for housing project and begin construction. Term Commencement Date (thirty days following Housing Developer's receipt of building permits and other approvals for housing project).	Approximately 18 months to complete

GROUND LEASE

BETWEEN

**COUNTY OF SANTA CLARA
AS “LANDLORD”**

AND

**CITY OF SUNNYVALE
AS “TENANT”**

CONCERNING CERTAIN REAL PROPERTY LOCATED

IN THE

CITY OF SUNNYVALE, CA

[FAIR OAKS HOUSING PROJECT – PHASE B]

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EXHIBIT A-2	Preliminary Site Plan
EXHIBIT A-3	Legal Description
EXHIBIT B	Permitted Title Exceptions
EXHIBIT C	Form of Memorandum of Lease
EXHIBIT D	Acknowledgement of Term Commencement Date
EXHIBIT E	Improvement Plan
SCHEDULE 1	Glossary of Terms
SCHEDULE 2	Milestones

GROUND LEASE

THIS GROUND LEASE (“**Lease**”) dated for reference purposes only as of December __, 2008, is entered into by and between the County of Santa Clara, a political subdivision of the State of California (“**Landlord**”) and City of Sunnyvale, a municipal corporation (“**Tenant**”).

RECITALS

A. The County of Santa Clara (“**County**”) is the owner of approximately 2.75 acres of real property located in the City of Sunnyvale, County of Santa Clara, California (the “**County Property**”), as generally reflected on the site plan attached hereto as Exhibit A-1. The northwest portion of the County Property is used for the Fair Oaks health clinic (“**Health Clinic**”), which was recently constructed by the County to replace a smaller health facility at the County Property. The former facility will be demolished and removed by the County.

B. The City of Sunnyvale (“**City**”) has requested that the County allow the City to construct, or cause to be constructed, approximately 124 units of senior affordable housing (the “**Affordable Housing Project**”) on approximately 1.2 acres of the County Property.

C. It is anticipated that the Affordable Housing Project will be constructed in two concurrent phases, Phase A (comprised of approximately 74 units) and Phase B (comprised of approximately 50 units) as generally reflected on Exhibit A-2. This is the Lease for Phase B of the Affordable Housing Project. A ground lease for Phase A of the Affordable Housing Project, on an adjacent leased premises reflected on Exhibit A-2, will be executed by Landlord and Tenant concurrently herewith.

D. The Affordable Housing Project will be located in the area of the County Property that currently provides surface parking for the Health Clinic. Pursuant to this Lease, the City will construct, or cause to be constructed, a parking garage, adjacent to the Health Clinic, on the Landlord’s Retained Property (as defined in Section 102.3 below) to replace the surface parking that will be lost as a result of the development and operation of the Affordable Housing Project.

E. The City previously requested proposals from affordable housing developers and selected Mid-Peninsula Housing Coalition, a California non-profit corporation, as the developer of the Affordable Housing Project (the “**Developer**”). Pursuant to Government Code Section 25539.4, the County may, by a four-fifths vote, convey property directly to the City, so long as the property is not required for County purposes, and pursuant to Government Code Section 54221(e), the County may convey property directly to a developer for affordable housing.

F. The County Board of Supervisors has determined that (i) this Lease will result in economic and public benefit to the County; (ii) a reasonable expectation exists that future public need justifies retention of fee ownership of the property leased hereunder; and (iii) this Lease will not interfere with the use or development of the County’s Health Clinic.

ARTICLE 1

PREMISES

101 Lease of Premises. For and in consideration of the Rent and agreements hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises on the terms and conditions set forth below. This Lease is effective and binds the parties as of the date this Lease is signed on behalf of Landlord (“**Effective Date**”), as reflected on the Landlord’s signature page, notwithstanding that the Term Commencement Date will occur on the date described in Section 201.

102 Premises and Related Definitions.

102.1 “**Housing Improvements**” means all structures, parking, on-site utility installations, landscaping, amenities, fences and other housing improvements, including off-site improvements that support the housing, excluding the Parking Garage Improvements, pursuant to the Improvement Plan. It includes all Alterations located from time-to-time on the Premises. Landlord acknowledges and agrees that the Affordable Housing Project may be constructed concurrently or in two sequential phases, as long as at least half of the required number of affordable housing units are included in the first phase.

102.2 “**Initial Project Improvements**” means all buildings, structures, parking, utility installations, driveways, landscaping, amenities, fences and other improvements to be constructed pursuant to the Improvement Plan, and includes both the Housing Improvements and Parking Garage Improvements.

102.3 “**Landlord’s Retained Property**” means the portion of the County Property that is retained by the County and is not leased to the City for the Affordable Housing Project, which area is identified on Exhibit A-1.

102.4 “**Parking Garage Improvements**” means a parking structure comprised of at least 210 parking spaces, utility installations, driveways, landscaping and other improvements appurtenant and necessary to the parking structure to be constructed on the Landlord’s Retained Property, in the area identified on Exhibit A-2. The Parking Garage Improvements are generally depicted on the plans and specifications for the Parking Garage Improvements dated October 30, 2008 and prepared by Jon Worden Architects (“**Approved Preliminary Garage Plans**”), subject to County’s review as provided in Section 504.

102.5 “**Premises**” means the land that the Landlord leases to Tenant pursuant to this Lease, as identified in Exhibit A-2 hereto and legally described in Exhibit A-3 hereto, for Phase B of the Affordable Housing Project. Following the recordation of the parcel map pursuant to Section 510, the parties shall insert into Exhibit A-3 a legal description of the Premises referencing the recorded parcel map.

102.6 “**Project**” means the Premises together with the Housing Improvements located thereon.

102.7 “**REA**” means an Easement and Maintenance Agreement between the Landlord and Tenant for the Tenant’s use and shared maintenance of certain driveways and walkways on Landlord’s Retained Property. At a minimum, the driveways will provide ingress and egress for Landlord and Tenant (as well as their respective employees, representatives, agents, contractors, guests, invitees, tenants, and subtenants) from both Fair Oaks Avenue and Garland Avenue in the locations generally described in Exhibit A-2, which driveways shall be used only to serve the Health Clinic and Housing Improvements. The REA will be recorded against the County Property prior to the Term Commencement Date and shall burden and benefit the respective successors and assigns of Landlord and Tenant.

103 Possession. Landlord shall deliver to Tenant possession of the Premises on the Term Commencement Date (as defined in Section 201). Tenant may not commence construction of the Parking Garage Improvements or Housing Improvements unless and until the applicable pre-construction conditions of Section 503 are met. Landlord shall deliver possession of the Premises in the following condition:

(a) Landlord shall demolish and remove the former health clinic structure from the Premises, including the removal and disposal of the asbestos material and construction debris as referenced in the Phase I Environmental Report prepared by Ceres Associates dated April 2, 2008, Project # CA1884-1; and

(b) Landlord shall deliver title to the Premises subject only to the exceptions identified in Exhibit B of this Lease.

104 Definitions Glossary. A Glossary of the other defined terms in this Lease is attached hereto as Schedule 1.

ARTICLE 2

TERM OF LEASE

201 Term. The term of this Lease (the “**Term**”) shall commence upon thirty (30) days following Developer’s receipt of the building permits and other approvals required for the commencement of construction of the Housing Improvements (the “**Term Commencement Date**”) and shall expire at 11:59 p.m. on the last day of the month in which the eighty-fifth (85th) anniversary of the Term Commencement Date occurs (the “**Expiration Date**”), unless terminated earlier under any provision of this Lease. The expiration or sooner termination of the Term shall be referred to as “**Lease Termination.**”

202 Early Lease Termination Rights.

202.1 Landlord’s Right. If Tenant fails to submit a fully executed development and disposition agreement (“**DDA**”) within one hundred twenty (120) days following the Effective Date that will obligate the Developer (or an affiliated entity) to design, construct and operate the Housing Improvements, then the Landlord may, at any time until Tenant has completed the required act, serve Tenant with notice (the “**Notice of Late Performance**”) of such failure and Tenant shall have thirty (30) days from receipt of the Notice of Late Performance to perform. If Tenant submits a fully executed DDA within the thirty (30) days, the

County will withdraw its Notice of Late Performance. If Tenant fails to submit a fully executed DDA, Landlord may (but shall not be required to) terminate this Lease on thirty (30) days notice to Tenant. If Landlord properly exercises its option to terminate this Lease, Landlord is entitled to retain the First Base Rent Installment as consideration for having entered into this Lease and as compensation to Landlord for Tenant's failure to perform hereunder, and each party will be released of any further obligation hereunder except those that expressly survive. Notwithstanding anything to the contrary, Tenant's time to perform shall be extended by: (i) Landlord's failure to timely meet its obligations hereunder and (ii) Unavoidable Delays.

202.2 Tenant's Right.

(a) If Tenant fails to enter into a DDA with Developer (or an affiliated entity) for the Affordable Housing Project within one hundred twenty (120) days following the Effective Date, Tenant may deliver written notice to Landlord of Tenant's termination of Lease pursuant to this section on or before that date. If Tenant exercises its option to terminate this Lease, Landlord is entitled to retain the First Base Rent Installment as consideration for having entered into this Lease (as well as any reimbursement of review costs as provided in Section 504.1.3) and each party is relieved from further obligations hereunder except those that expressly survive Lease Termination. Tenant's termination rights under this Section 202.2 automatically expire and are of no further force or effect one hundred twenty (120) days after the Effective Date. Tenant's failure to deliver a termination notice within this required time period shall be deemed a waiver of any termination rights under this Section 202.2.

(b) The obligation to lease the Premises pursuant to this Lease is subject to, and conditioned upon, the City's approval of the Initial Project Improvements and completion of environmental review by the City, as Responsible Agency, pursuant to the California Environmental Quality Act ("**CEQA**") and the expiration of any appeal periods. The County acknowledges that the City's review and approval of the Initial Project Improvements will be independent of this Lease. If the foregoing conditions are not met within forty five days (45) days following the Effective Date, Tenant may deliver written notice to Landlord of Tenant's termination of Lease pursuant to this section on or before that date.

ARTICLE 3

RENT

301 Rent. Tenant's obligation to pay rent under this Lease shall consist of the following: (i) Base Rent in the amount of Four Hundred Forty Six Thousand Eight Hundred Dollars (\$446,800); (ii) one-half of the actual design and construction costs of the Parking Garage Improvements to be constructed by Tenant or Developer pursuant to Article 5 (which is estimated to be one-half of Five Million Fifty Thousand Dollars (\$5,050,000)) and (iii) Additional Rent (as defined in Section 302.1). The foregoing are collectively referred to as "**Rent.**" Tenant will pay the "**Base Rent**" in the following installments:

301.1 First Base Rent Installment. Within forty five (45) days following the Effective Date, Tenant will pay \$66,800 to Landlord for the County's demolition and removal of

the former health clinic structure on the Premises and delivery of the Premises in accordance with Section 103, which amount will be non-refundable to the Tenant.

301.2 Second Base Rent Installment. Tenant will pay \$180,000 upon the earlier of (i) thirty (30) calendar days after Tenant and Developer execute a DDA for the Affordable Housing Project or (ii) one (1) year from the Term Commencement Date, unless Landlord or Tenant earlier terminate this Lease pursuant to Section 202.

301.3 Third Base Rent Installment. Tenant will pay \$200,000 within thirty (30) calendar days after recorded financial commitments for construction of the Housing Improvements pursuant to this Lease.

302 Rent Definitions

302.1 “**Additional Rent**” means all sums, Impositions (as defined in Section 401 hereof), costs, expenses, and other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay (except for the Rent described in Section 301). Tenant’s obligation to pay Additional Rent shall begin to accrue on the Term Commencement Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Lease.

302.2 “**Lease Year**” means each calendar year during the Term, except if the Term commences on a date other than January 1, the first Lease Year shall be a partial calendar year commencing on the Term Commencement Date and ending on December 31 of that calendar year, and the last Lease Year shall be a partial calendar year commencing on January 1 and ending on the date of Lease Termination.

303 Place of Payment. Tenant shall pay all Rent to Landlord at the Office of the County Executive, 70 West Hedding Street, 11th Floor, San Jose, California 95110, unless Landlord instructs Tenant in writing to deliver payment to another address, or unless this Lease specifically provides another place for payment.

304 No Cost to Landlord: No Counterclaim, No Abatement. Except as otherwise expressly provided in this Lease, the Rent payable under this Lease shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Base Rent. Except as otherwise expressly provided in this Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

ARTICLE 4

TAXES, ASSESSMENTS AND OTHER CHARGES

401 Impositions. Tenant covenants and agrees to pay or cause to be paid from and after the Term Commencement Date all taxes, sewer taxes, excises, license and permit fees, assessments, water, sewer or other rate and charges, taxes and charges and other governmental charges, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever which have accrued or which thereafter accrue at any time during the

Term and are allocable to the time period occurring within the Term (including assessments for public improvements or benefits), which prior to or during the Term are laid, assessed, levied, or imposed upon or become due and payable and a lien upon (i) the Project or any part thereof; (ii) any personal property, equipment or other facility used in the operation of the Project; (iii) the rent or income received by Tenant from subtenants or licensees; (iv) any use or occupancy of the Project and of any rights, obligations, easements and franchises as may now or hereafter be appurtenant, or appertain to the use of the Project; or (v) this transaction or any document to which Tenant is a party creating or transferring an estate or interest in the Project, subject to the limitations on Tenant's Transfer contained herein (all of which are hereinafter referred to as "**Impositions**"). Notwithstanding anything in this Lease to the contrary, the term "Impositions" shall specifically exclude any franchise tax or transfer tax imposed on any document to which Landlord is a party (other than this Lease) creating or transferring an estate or interest in the County Property, any municipal, state or federal income taxes levied against Landlord, any income, profits or revenues tax, assessment or charge imposed upon the Rent received by Landlord under this Lease, any estate, gift, succession, inheritance or transfer taxes of Landlord, or any business and occupational tax attributed and imposed upon Landlord for work, business or income not related or attributable to the Premises. If, by law, any Imposition is payable, or may at the option of the taxpayer be paid, in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may pay the same together with any accrued interest on the unpaid balance in installments as the same respectively become due and before delinquency. Tenant shall pay all Impositions before the addition of any fine, penalty, interest or cost. Landlord shall have the right to recover, as Additional Rent, Impositions payable before or after Lease Termination to the extent they are allocable to periods occurring during the Term.

401.1 Additional, Substitute or New Impositions. "Impositions" also shall include any amounts arising from a change in the methods of taxation prevailing on the Term Commencement Date. In addition to, in lieu of or as a supplement to or a substitute for the whole or any part of the Impositions now levied, assessed or imposed on the Premises or the Project, if there shall be levied, assessed or imposed (i) a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise, on the rent received therefrom; (ii) a tax, assessment, levy (including, but not limited to any municipal, state or federal levy), imposition or charge measured by or based in whole or in part upon the imposed upon Landlord; or (iii) a license fee, tax or other similar charge measured by the Rent payable under this Lease, to the extent that such Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions. Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions.

401.2 Possessory Interest Tax. In accordance with the requirements of California Revenue and Taxation Code Section 107.6, Tenant is hereby informed that this Lease may create a possessory interest in Tenant in the Premises, that the possessory interest of Tenant may be subject to property taxation and that Tenant may be subject to the payment of property taxes levied on Tenant's possessory interest in the Premises. Any possessory interest tax shall be included in the definition of "Imposition." Tenant shall have the right to apply for an exemption from any or all of such Impositions, at Tenant's sole cost, and Landlord shall provide Tenant with such reasonable assistance and cooperation as Tenant may request in connection with its application for the exemption; provided, that such assistance and cooperation shall be at no cost to Landlord.

401.3 Separate Tax Parcel. Landlord shall cause the Premises to be segregated for tax purposes from the other real property owned by Landlord.

401.4 Change In Ownership. Tenant shall pay any increases in Impositions caused by any reassessment due to a “change in ownership” of Tenant’s rights, title and interest in and to the Premises and/or this Lease during the Term, as “change in ownership” is defined, from time-to-time, in the California Constitution or in the California Revenue and Taxation Code.

401.5 Tenant Right to Contest. Tenant may contest the legal validity or the amount of any Imposition through such proceedings as Tenant considers necessary or appropriate and Tenant may defer the payment thereof so long as such delay does not cause any delinquency or penalty to be assessed. In the event of any such contest, Tenant shall protect, defend and indemnify Landlord against all loss, cost, expense or damage resulting therefrom, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge or cause the Imposition to be paid or discharged. Landlord shall furnish such information as Tenant shall reasonably request in connection with any such contest provided that the information is otherwise available to the public.

401.6 Tenant Duty to File. As between the parties hereto, Tenant alone shall have the duty of attending to, making or filing any declaration, statement or report which may be provided or required by law as the basis of or in connection with the determination, equalization, reduction or payment of any and every Imposition which is to be borne or paid or which may become payable by Tenant under the provisions of this Section 401 and Landlord shall not be or become responsible to Tenant therefor, nor for the contents of any such declaration, statement or report.

401.7 Assessments. Tenant shall not cause or voluntarily agree to allow an assessment to attach to the Premises or the Affordable Housing Project after the Term Commencement Date. On Lease Termination Tenant shall pay any outstanding unpaid balance on any assessment that Tenant causes to attach to the Project. Landlord, at no cost to Landlord, agrees to cooperate with Tenant in connection with establishing any assessment payable during the Term which is reasonably necessary or helpful for the operation or improvement of the Project. Landlord shall not cause or voluntarily agree to allow an assessment to attach to the Premises or the Project after the Term Commencement Date without the prior consent of Tenant, which Tenant may withhold in its sole discretion.

402 Services. Tenant shall pay before delinquency all charges for gas, water, electricity, light, heat or power, telephone or other communication service, sewer, trash removal, cable and all other services or utilities used during the Term in, upon or about the Project by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenant or assignees. Tenant shall also obtain, or cause to be obtained, without cost to Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Project of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any service to and upon the Project.

ARTICLE 5

INITIAL PROJECT IMPROVEMENTS

501 Construction of Initial Project Improvements. Landlord is leasing the Premises to Tenant to enable Tenant to construct the Housing Improvements on the Premises and Parking Garage Improvements on the Landlord's Retained Property consistent with the Improvement Plan attached as Exhibit E. Tenant agrees to use commercially reasonable efforts to cause the Initial Project Improvements to be commenced following issuance of building permits and to pursue construction diligently to completion in accordance with the schedule attached hereto as Schedule 2, subject to Unavoidable Delays. Tenant acknowledges and agrees that it cannot commence construction of the Housing Improvements on the Premises until the Parking Garage Improvements have been completed and delivered to the County for use in connection with the Health Clinic.

502 General Construction Contractor Selection Procedures. Tenant shall select the general construction contractor(s) for the Initial Project Improvements, subject to Landlord's consent, which shall not be unreasonably withheld, delayed or conditioned. Landlord's objections to any proposed general construction contractor shall be limited to (i) the extent of relevant construction experience possessed by the proposed general construction contractor on similar projects of similar size and complexity; (ii) the claims history, including claims made against public owners, of a proposed general construction contractor; (iii) the history of any non-compliance with State Prevailing Wage Law obligations; (iv) the financial ability of the general construction contractor to undertake the Project; and (v) the bond capacity of the general construction contractor. Tenant shall be required to provide Landlord with the name of a proposed general construction contractor prior to notification by Tenant to the general contractor of its selection. Landlord shall register any objection or probable objection to a proposed general construction contractor within ten (10) business days after notification to Landlord by Tenant. The Tenant's contract with the general construction contractor will require the general construction contractor to carry insurance acceptable to Landlord, and the general construction contractor must comply with Landlord insurance requirements prior to the commencement of work on the Project. No Landlord consent to Tenant's selection of a general construction contractor shall constitute an approval of the contractor or of the contractor's work, or a waiver by Landlord of any claims that may accrue to Landlord against a contractor or subcontractor. Any review by Landlord is for Landlord's internal purposes only and cannot be relied upon by, or deemed for the benefit of, Tenant or any third party. Landlord acknowledges and agrees that Developer, as opposed to the City, will be contracting with the general construction contractor(s) for the construction of all Initial Project Improvements pursuant to this Lease.

503 Construction Standards.

503.1 General Construction Standards. Tenant shall require any general contractor working on the Initial Project Improvements to take all reasonably necessary measures to minimize any damage, disruption or inconvenience to Landlord and the Health Clinic caused by such work, and shall require the general contractor to institute an appropriate safety program to assure the safety and convenience of all affected persons. In particular, Tenant's construction activities shall be conducted in such a manner as not to unreasonably interfere with access to, or otherwise unreasonably impact the use of, the Health Clinic (including any utilities located in

the Premises servicing the Health Clinic). Tenant shall: (i) develop a mutually agreeable route for ingress and egress to and from the Property for all construction vehicles, (ii) ensure a minimum of 160 parking spaces that will be available for Health Clinic employees and visitors during construction of the Parking Garage Improvements, and (iii) prepare a construction phase site utilization plan that sets forth the means and methods for maintaining safe clinic operations during all phases of construction. Tenant shall repair, at its own cost and expense, any and all damage that Tenant's construction work causes to the Landlord's Retained Property or the shared access road. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Initial Project Improvements and the performance of Tenant's work. Dust, noise, surface water drainage and other effects of Tenant's work shall be controlled by Tenant as required by the conditions of approval of the Initial Project Improvements and applicable laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

503.2 Compliance with Construction Documents and Laws. Tenant shall construct, or cause to be constructed, all Initial Project Improvements in substantial compliance with any documents relating thereto which have been approved by Landlord and in compliance with all applicable local, state and federal laws and regulations. All permitting and approvals for the Parking Garage Improvements and Project shall be processed through the City (rather than the County), except that any approvals or permits necessary for the Parking Garage Improvements shall also be obtained from the County's Fire Marshal. As between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

503.3 Prevailing Wages. The Parking Garage Improvements are a public work within the meaning of Labor Code 1720 and subject to the requirements of Labor Code section 1771, et seq. The parties acknowledge that portions of the Housing Improvements may also be a public work, but may be exempt from such requirements under the terms of the Labor Code. Landlord makes no judgment or opinion in this regard.

503.4 Delivery of Bonds. Prior to commencement of construction and as a condition to commencing construction of the Parking Garage Improvements and Housing Improvements, Tenant shall deliver to Landlord original payment and performance bonds, naming Landlord as co-obligee, as described below.

503.4.1 Payment Bond. Payment bonds meeting the requirements of Civil Code 3247 issued by surety companies acceptable to Landlord, permitted to act as surety in California and licensed to do business in California, in an amount not less than one hundred percent (100%) of the total amount of the construction contracts between Tenant and its general contractor (the "**Construction Contract**") for the construction of the Parking Garage Improvements and the Housing Improvements, which bonds by their terms shall remain in full force and effect and Tenant shall maintain it in full force and effect until the entire cost of the

Parking Garage Improvements and Housing Improvements, as applicable, have been paid in full, the respective improvements are satisfactorily completed in accordance with the provisions of this Lease, all claims for labor, materials, equipment or power have been paid, and all periods during which stop notices or claims of lien(s) of any kind may attach to the County's Retained Property or the Project, as applicable, have expired. The bonds shall contain provisions as required by Landlord, including the following: (i) that it secures the completion of the proposed construction free from all liens and claims of contractors, subcontractors, mechanics, laborers and material suppliers; and (ii) that the construction work shall be completed by the general contractor, or on its default, the surety.

503.4.2 Performance Bond. Performance bonds issued by a surety company acceptable to Landlord, permitted to act as surety in California and licensed to do business in California, in an amount not less than one hundred (100%) of the total amount of the Construction Contract between Tenant and its general contractor for the Parking Garage Improvements and Housing Improvements, as applicable, insuring completion of such work for the amount stated in the Construction Contract, with provision for increases in the bonded amount equal to increases under the Construction Contract resulting from change orders so that the amount of the bond will, at all times, be at least equal to the Construction Contract amount, as increased from time-to-time. The bond shall contain provisions as required by Landlord including a provision that the construction work shall be completed by the general contractor, or on its default, the surety.

503.5 Bonding Future Improvements. With respect to the construction, after completion of the Initial Project Improvements, of major improvements having a value in excess of \$1,000,000, at least ten (10) business days prior to the commencement of construction, Tenant shall provide to Landlord copies of payment and performance bonds, naming Landlord as co-obligee, conforming to the requirements in Section 503.4.

503.6 Submission of Cost Projections and General Contract. As a condition to Tenant's right to commence construction on the Premises, Tenant shall have delivered to Landlord:

503.6.1 Construction Contract, Development Documents, and Cost Estimates. Tenant's reasonable estimate of the total hard costs and total soft costs for construction of the Parking Garage Improvements or Housing Improvements, as applicable, plus an amount estimated by Tenant to be a reasonable contingency; and a copy of the Construction Contract for construction within Tenant's budgeted amount signed by a general contractor to whom Landlord has consented in accordance with Section 502, including the fully permitted and Landlord-approved construction documents; and

503.6.2 Financial Information and Insurance. Financial information, in form and content reasonably satisfactory to Landlord, evidencing sources of capital sufficient to demonstrate that Tenant has adequate financing or resources to pay for the total hard and soft costs of construction and will be able to complete the particular Initial Project Improvements pursuant to the terms of this Lease; and insurance as required by Article 8, including certificates showing the County as an additional insured.

504 Approval of Tenant's Plans.

504.1 Approval of Initial Project Improvement Plans and Specifications. Prior to commencement of construction of any phase of construction, Landlord must approve the Site Plan (as described below) for the applicable Initial Project Improvements. Once Landlord approves the Site Plan, Tenant may make material changes (“**Site Plan Material Changes**”) only with the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed.

504.1.2 Site Plan and Building Elevations Phase. Prior to submittal to the City for permit review for the Parking Garage Improvements or Housing Improvements, Tenant shall prepare and deliver to Landlord a site plan and exterior elevations (together, the “**Site Plan**”) for the respective Initial Project Improvements. Tenant shall regularly consult with Landlord during the preparation of the Site Plan. The Site Plan shall delineate exterior elevations, building layout and the location of building facilities, parking and internal driveways, onsite landscaping and signage, drainage, curbs, gutters and driveways. The Site Plan, at a minimum, shall be consistent with and integrate the Health Clinic’s drainage and circulation patterns and provide access (in a location acceptable to the County and governmental authorities having jurisdiction over same) to the County’s emergency generator serving the Health Clinic. Tenant acknowledges and agrees that the County will require continued access to the generator for purposes of fueling, operation, maintenance and compliance with BAAQMD requirements. The Site Plan exterior elevations shall clearly reflect exterior building design, including exterior wall and roofing materials and colors. Landlord shall have fifteen (15) days to approve or disapprove the Site Plan, which approval may not be unreasonably withheld, conditioned or delayed. If Landlord reasonably disapproves the Site Plan, Landlord shall deliver to Tenant a written notice of disapproval within the prescribed review period setting out the specific reasons for the disapproval and the changes required to gain Landlord’s approval, all in reasonable detail. Tenant and Landlord shall meet promptly thereafter to discuss possible remedies to Landlord’s disapproval and Tenant shall resubmit a revised Site Plan to Landlord for Landlord’s approval, and Landlord shall have fifteen (15) business days to review and to approve, or disapprove, the resubmittal. The process described above shall be followed until Landlord and Tenant agree on the Site Plan. If Landlord fails to approve or disapprove the Site Plan (or any required resubmittal) within the applicable time period, the submittals shall be deemed approved. Once the Site Plan is approved (or deemed approved), Landlord and Tenant shall indicate their approval in writing, describing with specificity the plans so approved. The parties acknowledge and agree that as Landlord approves of changes to the Site Plan, the term “Site Plan” shall mean those submittals last approved by Landlord.

504.1.3 Development Plans. Following Landlord’s approval of the Site Plan, Tenant shall prepare the design documents and Construction Documents for the applicable Initial Project Improvements (the “**Development Plans**”) that are consistent with the approved Site Plan. Tenant will provide the Development Plans for the Parking Garage Improvements to Landlord for review at the 75% stage of completion of the Construction Documents. Tenant will provide Landlord with all structural calculations for the Parking Garage Improvements and pay, as Additional Rent, County’s reasonable costs of peer review of the structural portions of the Development Plans for the Parking Garage Improvements by Biggs Cardosa, not to exceed the sum of Thirty Thousand Dollars (\$30,000). In addition, Landlord shall have thirty (30) days to

review the submitted Development Plans for (i) consistency with the Site Plan, (ii) in the case of the Housing Improvements, compatibility with the Health Clinic, number of housing units and location of Health Clinic surface parking, and (iii) in the case of the Parking Garage Improvements, compliance with the Approved Preliminary Garage Plans. If Landlord reasonably objects to any aspect of the Development Plans, Landlord shall deliver a written notice of disapproval within the prescribed review period setting out the changes required to gain Landlord's approval, all in reasonable detail. Tenant and Landlord shall meet promptly thereafter to discuss changes to bring the submitted Development Plans into compliance and Tenant shall resubmit revised Development Plans to Landlord for Landlord's reasonable approval, and Landlord shall have fifteen (15) business days to review and to approve, or disapprove, the re-submittal. The process described above shall be followed until Landlord has no reasonable objection. If Landlord fails to respond to the submitted Development Plans (or any required re-submittal) within the applicable time period, the submitted Development Plans shall be deemed approved.

504.1.4 Material Change. As used in this Lease, the term "**Material Change**" shall mean: (i) any change in building location, circulation, or grading plan that is inconsistent with the approved Site Plan; (ii) a significant change in the elevations, architectural style or architectural detail of the exterior of the improvements from an earlier approved iteration of the Development Plan; (iii) any change in the exterior colors (to the extent not previously approved by Landlord); (iv) any significant changes to the landscape plan; or (v) any change to the size or function of the Parking Garage Improvements.

504.2 Approval of Plans for Subsequent Alterations and Improvements. Except for the Initial Project Improvements and any Alterations for which Landlord's consent is not required hereunder, before making any other Alterations to the Housing Improvements, Tenant shall submit its plans and specifications to Landlord for approval, which approval will not be unreasonably withheld or delayed, and which shall be deemed given if Landlord does not provide a reasonably detailed statement of disapproval within fifteen (15) business days after receipt of Tenant's request for approval.

504.3 No Landlord Duty. Landlord's approval, review or modification of any plans, specifications or other construction documents with regard to the Initial Project Improvements (or any other work) is for Landlord's internal purposes only. Any Landlord review or approval specifically shall exclude review for the purpose of determining whether the reviewed documents contain any defects in the design, construction, or installation of improvements and Landlord shall have no liability or responsibility for any loss, damage, or injury arising out of or in any way connected with the design, construction, or installation of the any improvements on the Premises. Likewise, Landlord's review shall specifically exclude any review for purposes of determining whether the reviewed documents comply with laws, ordinances, rules or regulations applicable to the proposed work. By approving, reviewing, modifying or otherwise commenting on any of Tenant's plans, specification or other construction documents, Landlord shall not be deemed to make any express or implied warranty of the reviewed matters for any intended use or purpose. The scope and breadth of any review by Landlord is at Landlord's sole discretion and cannot be relied upon, or deemed for the benefit of, any other party.

505 Landlord's Cooperation. Landlord shall cooperate with and assist Tenant in every reasonable way in Tenant's efforts to obtain all governmental consents, approvals, permits or variances which may be required for the performance of any construction permitted under the terms of this Lease, including Landlord's joinder in any application for any such consent, approval, permit or variance where joinder therein by the owner of the Premises is required by law. Landlord's cooperation shall be at no cost to Tenant. The foregoing notwithstanding, Landlord shall not be required to join in any request or application for any change in the general plan designation or a rezoning of the Premises, unless necessary for the Project. In no event shall Landlord be required to join in any application, agree to any condition or sign any document which, in any way, will bind Landlord to perform, or agree not to perform, any act, expend any sums, dedicate any property or otherwise make any commitment with regard to Landlord's Retained Property, except as provided in Section 510 below or elsewhere in this Lease. Nothing contained in this Section or elsewhere in this Lease shall be deemed to limit Landlord's right (to the extent it could do so if it were not the Landlord), acting in its role as a governmental agency, to impose such restrictions or requirements on the issuance of consents, approvals, permits or variances, to make comment on applications and reports or otherwise to exercise its governmental authority.

505.1 Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Project without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In any site visits, Landlord shall comply with all safety rules and requirements of the contractor.

505.2 Pre-construction Meetings. Prior to beginning construction, Tenant shall arrange one or more meetings among Landlord, Tenant, the general contractor and Tenant's other construction professionals and consultants as Landlord shall reasonably request be included to discuss construction matters including construction hours, truck access, dust abatement, marshalling and storage areas and any other matters that may be of concern to Landlord relating to the Health Clinic.

506 Protection of Landlord. Nothing in this Lease shall be construed as constituting the request of the Landlord, express or implied, for the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Project or any part thereof for Landlord's account or benefit by any contractor, subcontractor, laborer or materialman. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises any notices which Landlord may deem necessary for the protection of Landlord and of the Premises and the Housing Improvements thereon from mechanics' liens or other claims. Tenant shall give Landlord ten (10) days' prior written notice of the commencement of any work to be done on the Project to enable Landlord to post such notices. In addition, Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection with the Premises and the improvements thereon.

507 Mechanics Liens. Although Landlord believes that California law prohibits any mechanics' lien from attaching to the Premises, nevertheless, Tenant shall keep the Premises, the

Landlord's Retained Property and the Initial Project Improvements free and clear of all claims for mechanics' liens and other liens on account of work done for Tenant or persons claiming under it. Tenant agrees to and shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or material suppliers or others for work performed or materials or supplies furnished to Tenant or persons claiming under it. In the event any such lien is recorded and is not removed or discharged within thirty (30) days, without reference to its validity Tenant shall, upon demand, furnish the bond described in California Civil Code Section 3143, or any other applicable or successor statute, which results in the removal of such lien.

508 Notice of Completion. Promptly upon completion of construction of each of the Parking Garage Improvements and the Housing Improvements, Tenant shall file or cause to be filed in the Official Records of the County of Santa Clara ("**Official Records**") a Notice of Completion executed by Tenant (the "**Notice of Completion**"). In addition, Tenant shall notify Landlord of completion of the Parking Garage Improvements and the Housing Improvements. Upon Landlord's reasonable determination that the applicable improvements have been completed in all material respects, Landlord shall execute and deliver a recordable Certificate of Completion (which shall not be unreasonably withheld, delayed or conditioned), in such form as reasonably requested by Tenant.

509 As-Is. Except for any representations or obligations set forth in this Lease, there are no warranties or representations, express or implied, by Landlord to Tenant and Tenant acknowledges that the execution of this Lease is and will be based solely upon Tenant's inspection and investigation of the Premises. Tenant acknowledges that Landlord has not made any representations or warranties other than as contained herein as to any matters concerning the Premises. Tenant independently has satisfied itself regarding the suitability of the Premises for Tenant's purposes including the suitability of the following characteristics of the Premises: topography, availability of utilities, general plan designation, zoning, soil, subsoil, presence or absence of fill, presence or absence of hazardous materials, the purposes for which the Premises or any part thereof may be used, drainage, flood zone designation, access to public roads, and applicable environmental laws, rules, or regulations. The failure on the part of the Tenant to procure in writing express warranties or representations regarding Premises characteristics shall constitute a conclusive admission that Tenant has relied on its investigation and judgment as to all matters relating to the Premises. Tenant represents that it has, prior to the execution of this Lease, made investigations and tests of the Premises, including inquiry from governmental agencies and quasigovernmental agencies having jurisdiction over the Premises, soils testing, tests and inspection for presence of hazardous materials and such other examination of the Premises as Tenant has deemed necessary to determine the condition of the Premises and that Tenant, except as specifically set out in this Lease, by execution hereof accepts the Premises in the condition and state in which they are, "as is."

510 Subdivision of Premises. Tenant shall not subdivide, by parcel map, subdivision map, or otherwise, the Premises or any portion thereof without the prior written consent of Landlord; provided, however, Landlord acknowledges and agrees that Tenant will process a parcel map (in a form subject to Landlord's approval) that: (i) merges the existing parcels at the County Property, (ii) removes the existing right of way related to Garland Avenue, (iii) relocates a water main easement crossing the Landlord's Retained Property, and (iv) dedicates an

emergency vehicle access that will serve the Health Clinic and Affordable Housing Project. Landlord shall cooperate with Tenant in processing the foregoing application and related documents.

511 As Built Plans and Assignment of Contracts.

511.1 Housing Improvements. Within sixty (60) days following completion of construction of any improvement, changes, alteration or repair on the Premises for which architectural drawings are required, Tenant shall deliver to Landlord one set of “As Built” drawings for such work.

511.2 Parking Garage Improvements. Within sixty (60) days following completion of construction of the Parking Garage Improvements, Tenant shall deliver to Landlord three sets of “As-Built” drawings for such work, all warranties and manuals. In addition, Tenant will fully and absolutely assign, or cause its Developer to assign, all interest in the architectural and construction contracts pursuant to which the Parking Garage Improvements were constructed in a fashion that will allow Landlord to pursue any defects in the Parking Garage Improvements that may arise subsequent to completion. Following the completion of the Parking Garage Improvements, Landlord shall be responsible for the operation, maintenance and use of the Parking Garage Improvements.

ARTICLE 6

USE OF PREMISES

601 Permitted Uses.

601.1 Permitted Use. Tenant acknowledges that Landlord has entered into this Lease and has agreed to the Rent structure contained herein in material reliance on Tenant’s Lease to permit only those uses described herein. Tenant may use the Premises and the Housing Improvements for the development, use and operation of at least forty (40) units of senior affordable housing, together with ancillary service facilities, including business offices, parking, and common areas (collectively, the “**Permitted Use**”), and for no other purposes without the prior written consent of Landlord which Landlord may withhold in its sole discretion. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Landlord acknowledges and agrees that the City, for purposes of the California Community Redevelopment Law, the City’s Housing Element, the City’s Below Market Rate and Affordable Housing Ordinances, and/or all other applicable laws, shall be entitled to the full amount of credits available for the affordable housing units located at the Premises.

601.2 Landlord Audit. Landlord shall have the right, not more often than once per Lease Year, during usual business hours on usual business days, to audit Tenant’s books and records to confirm Tenant’s use of the Premises in accordance with Section 601.1 of this Lease upon providing Tenant with fifteen (15) business days prior written notice.

602 Operation. Tenant will operate the Project in a similar standard as similar projects operated by high quality affordable housing property managers.

603 Hazardous Materials. Landlord and Tenant each has undertaken investigations of the Premises in an attempt to determine if any Hazardous Materials (as defined below) is present on the Premises. Subject to Landlord's obligation to demolish and remove the prior health clinic structure and deliver possession of the Premises as provided in Section 103, Tenant assumes responsibility for the investigation and remediation, as and to the extent required by Environmental Laws, of all Hazardous Materials in, on or under the Premises or the Project that are discovered during the Term, except to the extent (i) any Hazardous Materials that originate from Landlord's Retained Property or (ii) any Hazardous Materials that are generated or caused by Landlord's acts or omissions and migrate to the Premises following the Term Commencement Date. Notwithstanding anything to the contrary in this Lease, the parties acknowledge and agree that a generator will be located at the southwest corner of the Property (in the location identified in Exhibit A-2) for the benefit of the Health Clinic. Landlord shall maintain the generator in compliance with applicable laws and shall retain all responsibility and obligations relating to the operation, maintenance and use of the generator.

603.1 Release of Landlord. Tenant hereby releases Landlord from all claims, liability, damages or costs, that Tenant may have at any time arising, directly or indirectly, from the presence, or alleged presence of Hazardous Materials in, on or under the Premises or the Project; provided, however, that this release excludes and shall not apply to (i) any Hazardous Materials that originate from Landlord's Retained Property or (ii) any Hazardous Materials that are generated or caused by Landlord's acts or omissions and migrate to the Premises following the Term Commencement Date. In connection herewith, Tenant waives the provisions of Civil Code Section 1542, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Initial of Tenant _____

603.2 Tenant to Comply with Environmental Laws. Except as otherwise expressly provided in this Lease, Tenant shall comply, at its sole cost, with all Environmental Laws relating to any Hazardous Materials in, on or under the Premises or the Project during the Term. Tenant shall become aware of the content of such Environmental Laws and all other laws regulating Hazardous Materials as enforced by, but not limited to, the City of Sunnyvale, the Bay Area Air Quality Management District, Santa Clara County Health Department, the Santa Clara Valley Water District, California Regional Water Quality Control Board, California Environmental Protection Agency, Department of Toxic Substances Control and all state and federal offices enforcing regulations concerning occupational safety and health. It shall be the sole obligation of Tenant to obtain any permits and approvals required pursuant to the Environmental Laws.

603.3 Landlord's Consent Required. Except for, and to the extent of, the type and quantities of Hazardous Materials specified in the Hazardous Materials Disclosure

Certificate approved by Landlord from time-to-time, Tenant shall not be entitled to use or store any Hazardous Materials on, in or about the Project without obtaining Landlord's prior written consent. If Landlord consents to any other usage or storage, then Tenant shall be permitted to use and/or store only those Hazardous Materials that are necessary to Tenant's business to the extent disclosed in the then applicable Hazardous Materials Disclosure Certificate, as amended if applicable, and then only to the extent expressly approved by Landlord in writing. Tenant's usage and storage shall be in compliance with Environmental Laws. Tenant agrees that any changes to the type and/or quantities of Hazardous Materials specified in the most recent Hazardous Materials Certificate may be implemented only with the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion. Tenant shall not be entitled nor permitted to install any tanks under, on or about the Project for the storage of Hazardous Materials without the prior written consent of Landlord, which may be given or withheld in Landlord's sole discretion. Landlord shall have the right at any time during the Term upon reasonable notice (i) to inspect the Project; (ii) to conduct tests and investigations to determine whether Tenant is in compliance with the provisions of this Section; and (iii) to request lists of all Hazardous Materials used, stored or otherwise located on, under or about the Project. If Landlord requests a list of Tenant's Hazardous Materials, Tenant shall provide a complete list within fifteen (15) days. The costs of such inspections, tests and investigations shall be borne solely by Tenant, if Landlord reasonably believes they are necessary. The rights granted to Landlord herein shall not create (a) a duty on Landlord's part to inspect, test, investigate, monitor or otherwise observe the Project and the activities of Tenant with respect to Hazardous Materials, including Tenant's operation, use and any remediation related thereto, or (b) liability on the part of Landlord for Tenant's use, storage, disposal or remediation or Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith. No consent requested of, and given by, Landlord pursuant to this Section shall be deemed to make Landlord a "controlling" party nor shall any Landlord consent result in Landlord assuming any responsibility for Hazardous Materials on the Project.

603.4 Tenant Indemnity. Tenant shall be solely responsible for and shall indemnify, protect, defend (by counsel reasonably approved by Landlord) and hold harmless Landlord and its agents and employees (collectively the "**Landlord Indemnitees**") from and against any and all claims, costs, penalties, fines, losses which arise during or after the Term as a result of the presence of Hazardous Materials in, on, under or about the Project due to Tenant or Tenant's employees, guests, invitees, agents, contractors or subtenants ("**Tenant's Parties**") during the Term, including any resulting from receipt, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, or disposal of Hazardous Materials in, upon or about the Project including (i) diminution in value of the Premises; (ii) damages from the loss or restriction on use of rentable or usable space or of any amenity of the Project; (iii) damages arising from any adverse impact on marketing of the Project; and (iv) sums paid in settlement of claims, attorneys' fees, consultants' fees, costs of investigation, damages, injuries, causes of action, judgments and expenses. This indemnification of the Landlord Indemnitees by Tenant includes any and all costs incurred in connection with any investigation of site conditions and any clean up, remediation, removal or restoration work required by and federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil, sub-soils, groundwater, equipment or elsewhere in, on, or under the Project due to Tenant or Tenant's Parties. This indemnification by Tenant shall survive the termination of this Lease.

603.5 Tenant Remediation. If contamination or deterioration exists of air, water or soil in, on, under or above the Project resulting in a level of contamination greater than the maximum levels established from time-to-time during the Term by any governmental authority having jurisdiction over such contamination, except to the extent of (i) any Hazardous Materials that originate from Landlord's Retained Property or (ii) any Hazardous Materials that are generated or caused by Landlord's acts or omissions, then Tenant shall promptly take any and all action necessary to clean up such contamination in the manner as required by law. Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in or about the Project, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Project, without first notifying the Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene, or otherwise appropriately assert and protect Landlord's interest with respect thereto. If Tenant fails to take such action, Landlord may, but shall not be obligated to, take such action. In such event, all costs incurred by Landlord with respect to such clean up activities shall be for the account of Tenant, except as otherwise provided herein.

603.6 Tenant Notice to Landlord. Tenant shall immediately provide Landlord with telephonic notice, which shall later be confirmed by written notice, of any and all accumulation, spillage, discharge, and disposal of Hazardous Materials onto or within the Project during the Term, and any injuries or damages resulting directly or indirectly there from following the Term Commencement Date. Further, Tenant shall deliver to Landlord a copy of each and every notice or order received from governmental agencies concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. In addition, Tenant shall immediately notify Landlord in writing of (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Environmental Laws; (ii) any claim made or threatened by any person against Tenant or the Project relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any local, state or federal environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Project, including any complaints, notices, warnings, or asserted violations relating in any way to the Project, or Tenant's use thereof. Tenant shall promptly deliver to Landlord copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Project. Landlord shall have the right to enter on the Project upon twenty-four (24) hours oral notice to Tenant for the purpose of inspecting the Project for compliance with all environmental requirements.

603.7 Storage of Hazardous Materials. Tenant shall store in appropriate leak-proof containers, or in any other manner approved or prescribed by law, any and all Hazardous Materials permitted within the Project pursuant to this Lease, which if discharged or emitted into the atmosphere, upon the ground or into or on any body of water will or may (i) pollute or contaminate the same, or (ii) adversely affect (a) the health, safety or welfare of persons, whether on the Project, or elsewhere, or (b) the condition, use or enjoyment of the Project, or any real or personal property whether on the Project or anywhere else, or (c) the Premises or any of the improvements thereto or thereon. There shall be no ponding or surface

storage whatsoever of Hazardous Materials on the Premises. The following substances may not be brought onto the Project: Arsines, Etching, Asbestos, Fluorocarbons, Chlorocarbons, Dioxin, (including dioxin precursors and intermediates) or anything contained in the California List of Extremely Hazardous Chemicals.

603.8 Tenant's Disposal of Hazardous Materials. Notwithstanding anything to the contrary contained in this Section 603, Tenant shall not dispose of any Hazardous Materials, regardless of the quantity of concentration, within the drains and plumbing facilities within the Project or other property of Landlord. The disposal of Hazardous Materials shall be in approved containers and removed from the Project only by duly licensed carriers. If Tenant becomes aware of or suspects the presence of any Hazardous Materials existing within or coming onto the Project, Tenant shall immediately give written notice of such condition to Landlord as required by California Health and Safety Code Section 25359.7.

603.9 Information/Fines. To the extent required by law, Tenant shall maintain a Material Safety Data Sheet for all Hazardous Materials brought into the Project. Such information shall be kept current at all times and shall be kept in a place accessible to Landlord at any time for inspection and in the event of an emergency. Tenant shall pay, prior to delinquency, all fees, taxes (including excise taxes) and fines that are charged upon or incident to Tenant's activities related to Hazardous Materials, and shall not allow such obligations to become a lien or charge against the Project or upon Landlord. Tenant shall deliver to Landlord true and correct copies of the following documents related to the handling, storage, transportation, disposal and emission of Hazardous Materials, concurrently with the receipt from or submission to a governmental agency:

Permits; approvals, reports and correspondence; storage and management plans, notice of violations of any Environmental Laws; plans relating to the installation of any storage tanks to be installed in, under or around the Project; and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks installed in, or under the Project.

603.10 Closure on Lease Termination. On or before the expiration of this Lease, Tenant shall take any and all action required to be taken under Environmental Laws in order (i) to surrender the Project to Landlord in a condition which would be completely free of any and all Hazardous Materials brought in, on or under the Project by Tenant or Tenant's Parties (excluding removal of the Housing Improvements); and (ii) close and remove any storage tanks installed with Landlord's prior written consent in, on or under the Project as required by Environmental Laws. Tenant shall submit to Landlord any and all closure plans required by law. Tenant shall complete its closure within a reasonable time after the delivery of its closure plan to Landlord, and in all events Tenant shall complete its closure and/or removal before Lease Termination. Tenant shall submit to Landlord prior to Lease Termination copies of appropriate documentation evidencing that all requirements of agencies with jurisdiction over Tenant's closure have been satisfactorily met.

603.11 Landlord's Right of Termination. Should Tenant breach any promise or fail to timely satisfy any of the conditions contained in this Section, Landlord may, for no

additional cause, terminate this Lease upon one hundred eighty (180) days written notice to Tenant, provided that in the event that during such notice period, Tenant commences remediation of such condition and diligently prosecutes such remediation this Lease shall not terminate.

603.12 Definitions.

603.12.1 “**Hazardous Materials**” means any hazardous, explosive or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term “**Hazardous Materials**” includes any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 15122.7, or is listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos; (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 30; (viii) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C., § 1317); (ix) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (x) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 41 U.S.C. § 9601 et seq., except for limited quantities of cleaning products, office supplies, construction materials and similar products typically used or stored at similar multi-family housing projects or required in connection with the routine operation and maintenance of the Premises, and in compliance with all applicable Environmental Laws.

603.12.2 “**Environmental Law**” means any present or future federal, state or local law, whether common law, statute, rule, regulation or ordinance, judgment, order, or other governmental restriction, guideline, listing or requirement, relating to the environment or any Hazardous Materials, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., and applicable provisions of the California Health and Safety Code and the California Water Code, all as heretofore or hereafter may be amended from time-to-time.

604 Compliance by Tenant with Laws and Governmental Regulations. Tenant, at its sole cost and expense, promptly shall comply with all present and future laws, statutes, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards, and offices (“**Applicable Laws**”) which are applicable to the Project or to the use or manner of use of the Project by the owners, tenants or occupants thereof, whether or not such law, ordinance, order, rule, regulation or requirement

shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over the streets adjacent to the Project, or onto or over other property contiguous or adjacent thereto. Tenant, at its sole cost and expense, shall have the right to contest, by appropriate proceedings diligently conducted in good faith in the name of Tenant, the validity or application of any Applicable Laws. If compliance with any Applicable Laws legally may be delayed pending the prosecution of any such proceeding without cost or penalty and without subjecting Landlord to any liability, civil or criminal, Tenant may delay compliance until the final determination of such proceeding.

605 Landlord Right to Use and Dispose of Retained Property. Tenant acknowledges that Landlord has made no representations regarding the use, development or operation of any other portion of the Landlord's Retained Property. Tenant acknowledges that this Lease shall not preclude Landlord from altering any currently proposed use for other parts of the Landlord's Retained Property, and Landlord may lease or sell all, or a portion of, the Landlord's Retained Property, all without any consultation with or liability to Tenant, so long as such use is reasonably compatible with the Project.

606 Compliance with Recorded Documents. Landlord and Tenant mutually agree to comply with all recorded documents encumbering the County Property, including the REA.

607 Nuisance. Tenant shall not use the Premises or the Project for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Project which would result in a nuisance or a violation of the laws and ordinances of the United States, State of California, County of Santa Clara and/or City of Sunnyvale and all agencies thereof as the same may be now or hereafter in force and effect.

ARTICLE 7 **SURRENDER AND RIGHT TO REMOVE**

701 Ownership During Term.

701.1 Housing Improvements. All Housing Improvements constructed or caused to be constructed on the Premises by Tenant, subject to the terms of this Lease, shall be and remain the property of Tenant during the Term.

701.2 Personal Property. Tenant shall provide all personal property reasonably required for normal operation of the Project to the standard required in this Lease. During the Term, all personal property, furnishings, fixtures and equipment installed by Tenant in, on or around the Project shall be the personal property of Tenant (the "**Personal Property**").

702 Ownership at Lease Termination.

702.1 Housing Improvements. Upon Lease Termination, the Housing Improvements shall unconditionally be and become the property solely of Landlord, without compensation to Tenant and this Lease shall operate as a conveyance and assignment thereof. Within thirty (30) days after Landlord's request following Lease Termination, Tenant shall sign and deliver to Landlord in recordable form a deed quitclaiming all Tenant's interest in the Housing Improvements to Landlord. Upon Lease Termination, Tenant shall surrender to

Landlord the Premises and the Housing Improvements in reasonably good condition and repair, reasonable wear and tear excepted and free from all monetary liens and encumbrances placed on the Premises by, or on behalf of, Tenant. “**Reasonable wear and tear**” when used in this Lease, shall mean wear and tear caused by aging, use and other conditions which occurs notwithstanding the application of standards for maintenance, repair and replacement typical of other similar affordable housing projects in the Project area of comparable age. Reasonable wear and tear is not intended, nor shall it be construed, to include items of neglected or deferred maintenance which would have or should have been attended to during the Term the required standards for maintenance, repair and replacement had been applied.

702.2 Personal Property. Any Personal Property of Tenant which remains on the Premises for thirty (30) days after the Lease Termination shall unconditionally be and become the property solely of Landlord without compensation to Tenant and this Lease shall operate as a conveyance and assignment thereof.

703 Condition of Project Improvements.

703.1 Condition of Project at Lease Termination. Landlord has entered this Lease in reliance on the fact that, at Lease Termination, Landlord will receive from Tenant the Housing Improvements in the condition required by Section 702. At any time during the last twenty four (24) months of the Term, Landlord may inspect the Housing Improvements to confirm that the Housing Improvements are being properly maintained as required herein. Following its inspection, Landlord may deliver to Tenant written notification of any portions of the Housing Improvements which Landlord has determined are not being properly maintained and Tenant shall promptly comply with the provisions of this Lease regarding such items; provided, the failure of Landlord to inspect or to notify Tenant of any default hereunder shall not be a waiver of Landlord’s right to enforce Tenant’s maintenance and repair obligations hereunder.

703.2 Environmental Report. Prior to the expiration of the Term, Landlord shall have the right, at its sole cost, to have an environmental report of the Project prepared that assesses the existence on the Project of Hazardous Materials.

704 Removal of Project Subtenants. Tenant shall deliver the Project, at Lease Termination, to Landlord free from all occupancies and tenancies.

705 Survival. The provisions of this Article 7 shall survive Lease Termination.

ARTICLE 8

INSURANCE

801 Insurance. Tenant, at its sole cost and expense, during the Term shall keep and maintain the following policies of insurance (provided, however, prior to a Transfer of the Lease to a Developer Entity pursuant to Section 1504.3, the City may satisfy the following insurance requirements pursuant to its self-insurance program):

801.1 Property Insurance. Property damage insurance covering all the Housing Improvements and Personal Property owned by Tenant located on or in, or constituting a part of, the Project, insuring against all risks of direct physical harm except those excluded by the broadest form of property insurance coverage in general use, from time-to-time. The property insurance shall cover, at a minimum, the perils of fire, extended coverage, vandalism and malicious mischief, flood (but only if the Premises is in a flood zone), demolition and debris removal costs and increased costs that maybe required by code or ordinance upgrades. The insurance coverage amount shall be equal to one hundred percent (100%) of the full replacement cost of the building improvements and Tenant's Personal Property. The insurance shall (a) be provided on an all risk property coverage form as may be customary and commercially available on reasonable terms for like properties in Santa Clara County from time-to-time during the term of this Lease and (b) cover explosion of steam and pressure boilers and similar apparatus located in the Project. The insurance required hereunder shall be in amounts sufficient to prevent Tenant from becoming a co-insurer under the terms of the applicable policies, and any deductibles or self insurance retentions for insurance required to be carried by Tenant pursuant to this Section shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld. The policies of insurance carried in accordance with this Section 801.1 shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement" and such other endorsements as may be required by any Approved Lender and shall name any holder of any Leasehold Encumbrance as a loss payee in form acceptable to the lender. In lieu of obtaining insurance from a third party insurer, Tenant may "self-insure" its personal property (but not its inventory, the Housing Improvements or third party property under Tenant's control) provided such self-insurance affords Landlord all protections that would be available from third party insurance as required hereunder.

801.1.1 Full Replacement Cost. Full replacement cost shall be determined from time-to-time, but not more frequently than once in any sixty (60) consecutive calendar months (except in the event of substantial Alterations to the Housing Improvements), upon the written request of Landlord, by written agreement of Landlord and Tenant, or if they cannot agree within thirty (30) days of such request, by one of the insurers, or at the option of Landlord, by an appraiser, architect or contractor reasonably acceptable to Landlord, Tenant and the insurer(s). A copy of any such determination shall promptly be sent to Landlord, Tenant and the insurer(s) upon receipt thereof, and the insurance maintained in this Section 801.1 shall be adjusted to 100% of the new full replacement cost.

801.1.2 Automatic Increase. If Landlord has not requested and obtained an adjustment in the full replacement cost within the prior five (5) year period, then the full replacement cost shall be deemed to have increased by the percentage increase in construction

costs in the region for the previous five (5) year period as reflected in the Marshall & Swift West Coast Cost Index (or a successor index reasonably acceptable to Landlord and Tenant) using the Trend Multiplier for the San Francisco Area (the “**Deemed Increase**”) and Tenant shall cause the insurance coverage required by this Section 801.1 to be increased in an amount equal to the Deemed Increase multiplied by the full replacement cost in effect immediately prior to the relevant date. Tenant shall notify Landlord promptly of each insurance coverage increase hereunder.

801.2 Liability Insurance. General liability or commercial general insurance on an “occurrence basis” covering at a minimum liability for bodily injury, physical damage to property, products and completed operations, explosion, collapse and underground hazards, other personal and business torts and contractual liability on, in or about the Premises or the Housing Improvements or any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways. At all times during the Term, the limits of liability under this Section 801.2 shall be not less than five million dollars (\$5,000,000) combined single limit per occurrence, and any deductibles or self insurance retentions for insurance required to be carried by Tenant pursuant to this Section shall be subject to Landlord’s prior written approval, which approval shall not be unreasonably withheld. At all times when there are construction operations on the Premises, Tenant shall cause the general contractor and each subcontractor to carry commercial liability insurance meeting requirements of this Section and of Section 801.5.

801.3 Worker’s Compensation Insurance. Worker’s compensation insurance, in the amount required under then applicable state law, covering Tenant’s employees, if any, at work in or upon the Project together with employees liability insurance for not less than one hundred thousand dollars (\$100,000) per occurrence for all employees engaged in services or operations under this Lease that includes Landlord, its governing board and employees as additional insureds (or a waiver of subrogation). Tenant shall require that any general construction contract entered into by Tenant with regard to the Initial Project Improvements include a contractual undertaking by the general contractor to provide worker’s compensation insurance for its employees engaged in construction of the Initial Project Improvements in an amount in compliance with applicable state law.

801.4 Builder’s Risk Insurance. At all times when there are construction operations on the Premises, Tenant shall maintain or cause the general contractor to maintain comprehensive “all risk” builder’s risk insurance, including vandalism and malicious mischief, covering all of the work of the contractor, including in progress improvements in place on the Premises, all materials and equipment stored at the Premises or an off site storage facility and furnished under contract, and all materials and equipment that are in the process of fabrication at the premises of any third party or that have been placed in due course of transit to the Premises or an offsite storage facility when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Tenant or its contractors or subcontractors, such insurance to be written on a completed value basis in an amount not less than the full estimated replacement value of the contractor’s work.

801.5 Miscellaneous Insurance and Endorsements. Tenant also shall carry the following insurance and/or endorsements:

(a) Coverage against liability for bodily injury or property damage arising out of the use, by or on behalf of Tenant, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations called for under this Lease;

(b) Cross liability endorsements;

(c) Contractual liability, expressly including contractual indemnity liability assumed by Tenant under this Lease;

(d) Broad form property damage liability;

(e) Additional insured endorsements to the liability policies protecting Landlord, its supervisors, agents and employees;

(f) Premises and operations including bodily injury, personal injury, death or property damage occurring upon, in or about the Premises or the Housing Improvements on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways; and

(g) With regard to the policies of general liability and automobile liability, each shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

802 General Insurance Provisions. All policies of insurance provided for in this Article shall be provided under valid and enforceable policies, in such forms and amounts as required in this Lease, issued by insurers licensed to do business in the State of California and having a rating of A:5 or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Upon the Term Commencement Date and, thereafter, not fewer than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Article, Tenant shall deliver to Landlord two copies of a certificate of the insurer reasonably satisfactory to Landlord. Each certificate shall certify that coverage required in this Lease has been issued and remains in force, including all endorsements required by this Lease. If requested by Landlord, Tenant shall deliver within five (5) days following such request, certified, complete copies of the insurance policies and endorsements required in this Lease. Insurance policies to be provided under this Lease shall meet the following:

(a) Each casualty and liability policy of insurance obtained pursuant to this Lease, other than workers compensation insurance, if any, shall contain endorsements which provide (i) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy; and (ii) a provision that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay any additional named insureds the amount of any loss sustained to which they otherwise would be entitled;

(b) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or

materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Landlord;

(c) Each casualty and liability policy, other than workers compensation insurance, shall be written as a primary policy not contributing with and not in excess of coverage that Landlord may carry; and

(d) Each casualty and liability policy, other than workers compensation insurance, shall expressly provide that Landlord shall not be required to give notice of accidents or claims and that Landlord shall have no liability for premiums.

803 Blanket and Umbrella Policies. Any insurance provided for in this Article 8 may be placed by a policy or policies of blanket and/or excess liability (or umbrella) insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Project shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Lease.

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

805 Landlord Disclaimer. Landlord makes no warranty or representation that the forms or limits of coverage required hereunder are adequate to protect Tenant's property or to cover Tenant's obligations under this Lease. Tenant's obligations hereunder shall not be limited to the amount of insurance that Tenant is required to provide by this Article 8. Tenant's failure to deliver any insurance certificate or policy to Landlord, or Landlord's failure to request delivery of any certificate or policy, in no way be construed as a waiver of Tenant's obligation to provide the insurance coverage specified herein.

806 Adjustment of Coverage. If either party shall at any time believe that the limits or extent of coverage or deductibles with respect to any of the insurance required in this Article 8 then carried are either excessive or insufficient for a prudent owner and operator of a project like the Project, or if any required coverage is at any time not available, or not available at commercially reasonable rates, the parties shall endeavor to agree upon the proper, practicable and commercially reasonable limits and extent of coverage and deductibles for such insurance, and upon doing so shall execute an addendum to this Lease, letter agreement or other writing memorializing their agreement. If the parties at any time are unable to agree on the proper, practicable and commercially reasonable limits and extent of coverage and deductibles for such insurance, the matter(s) in dispute shall be resolved pursuant to the provisions of Section 1801.

ARTICLE 9

INDEMNIFICATION BY TENANT

Tenant shall indemnify and save harmless Landlord from and against any and all claims by or on behalf of any person, firm or corporation arising during the Term to the extent arising

from any conduct by any party on, management of or any work or thing whatsoever done in or on the Premises, Project or Housing Improvements, except to the extent caused by the negligence or misconduct of Landlord or Landlord's employees, guests, invitees, agents, contractors or subtenants. Further, Tenant shall indemnify and save Landlord harmless against and from any and all claims by or on behalf of any person, firm, or corporation to the extent arising during the Term from (i) any condition of any building, structure or improvement on the Premises, or of any passageways or spaces therein or appurtenant thereto (except as otherwise provided in the REA); (ii) Tenant's breach or default in the performance of any of its covenants or agreements under this Lease; (iii) any negligence of Tenant, or any of its agents, contractors, subcontractors, servants or employees related to the Premises or Housing Improvements; (iv) any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the Term in or on the Premises or the Housing Improvements or any passageways or spaces therein or appurtenant thereto (except as otherwise provided in the REA); or (v) from the furnishing of labor or materials by Tenant. Tenant's indemnification obligation shall include all costs, reasonable attorney's fees, expenses and liabilities incurred in defending Landlord against any such claim, action or proceeding, which defense Tenant shall provide with counsel reasonably satisfactory to Landlord. If an insurer under insurance required to be maintained by Tenant hereunder shall undertake to defend the Landlord under a reservation of rights with respect to ultimate coverage and Landlord shall reasonably deem it necessary to retain independent counsel with respect to such matter, Tenant shall pay the reasonable fees of such counsel. If Landlord elects under such circumstances to use its County Counsel's office to defend an indemnified claim, the billing rates of attorneys in the County Counsel office shall be deemed to be the same as then charged by private business litigation law firms of similar size in Santa Clara County that provide similar legal services.

ARTICLE 10

DAMAGE AND DESTRUCTION

1001 Damage or Destruction. If the Housing Improvements are damaged or destroyed, then except as otherwise provided in this Article 10, Tenant shall restore and rebuild the Housing Improvements as nearly as practicable to their condition immediately prior to such damage or destruction or with such Alterations as may be in conformity with the provisions of this Lease relating to Alterations. Lack of funds shall not be deemed a reasonable excuse for Tenant's failure to commence or complete the rebuilding, except as otherwise provided in this Article 10. Upon a damage or destruction, all insurance proceeds paid in respect of the damage or destruction shall be applied to the payment of the costs of the restoration required to be performed by Tenant pursuant to this Lease, and as otherwise provided in this Article 10. If Tenant's Leasehold Lender requires insurance proceeds be paid to it, Landlord and Tenant shall deliver such insurance proceeds to Tenant's leasehold lender. In the event the insurance proceeds are in excess of Five Hundred Thousand Dollars (\$500,000), the insurance proceeds shall be held in trust by a financial institution (the "**Insurance Trustee**") agreed upon by Landlord and Tenant, with the costs of such trust to be a first charge against the insurance proceeds. In the event the insurance proceeds are less than Five Hundred Thousand Dollars (\$500,000) they shall be paid to Tenant to be used for the renovation and/or reconstruction. After the completion of the restoration of the Housing Improvements, and expiration of all lien periods without any lien being filed, any remaining insurance proceeds shall be paid to Tenant and Tenant shall be

entitled to retain the same. If the funds deposited with the Insurance Trustee are insufficient to pay all costs and expenses of the restoration, Tenant shall indicate, in its notice of rebuilding, Tenant's source of funds to pay for costs in excess of the insurance proceeds. Before commencing the restoration, Tenant shall deposit with the Insurance Trustee the sum which, when added to the insurance proceeds, will be sufficient to pay all costs, direct and indirect, of rebuilding.

1002 Tenant Election to Restore. Tenant shall commence work on the restoration of any damage or destruction (as provided in Section 1004) within one hundred twenty (120) days following the damage or destruction, and shall diligently and continuously shall carry out the restoration to full completion as soon as practicable.

1002.1 Construction. The restoration by Tenant following any damage or destruction shall be in accordance with the provisions of Section 502, Section 503, Section 504, Section 505, Section 506, Section 507 and Section 508.

1002.2 Disbursement of Funds. The Insurance Trustee shall disburse funds only on a periodic basis approved by Landlord and Tenant and only upon receipt of invoices and other documentation, certified as correct by Tenant's architect, evidencing satisfactory completion of the work for which payment is requested ("**Payment Request**"). Further, the Insurance Trustee shall not disburse any funds unless the payment request is accompanied by (i) signed conditional waiver and release on progress payment in form complying with California law relating to all labor and materials described in the Payment Request and (ii) signed unconditional waiver and release upon progress payment in form complying with California law releasing all claims for labor and materials described in the immediately preceding Payment Request.

1003 Notice Required. In the event of material damage to or destruction of the Housing Improvements, Tenant shall promptly give Landlord notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article 10, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds \$500,000.

1004 Commencement of Restoration Defined. Tenant shall be deemed to have commenced the restoration process when it engages an architect and is diligently pursuing resolution of claims with Tenant's insurer.

1005 Tenant's Right to Terminate. Notwithstanding anything in this Article 10 to the contrary, so long as Tenant has maintained in effect the casualty insurance required by this Lease, Tenant shall have the right to terminate this Lease, effective as of the date of the casualty, upon written notice to Landlord (a "**Termination Notice**") in the event that any damage or destruction occurs and: (i) the reasonably estimated cost of the restoration work exceeds the available insurance proceeds by more than fifty percent (50%); (ii) then existing laws would not permit the repair, replacement, reconstruction and/or restoration of the Project to substantially the same condition and use as at the time immediately preceding the damage or destruction, or otherwise to a condition that would produce an economically feasible project of substantially the same use, consistent with all applicable requirements of this Lease; (iii) the time required to obtain all necessary governmental approvals required for the repair, replacement, reconstruction

and/or restoration of the Project in accordance with clause (ii) above, proceeding as promptly as reasonably practicable and using all commercially reasonable diligence, is reasonably estimated to exceed eighteen (18) months from the date of the damage or destruction; or (iv) the damage or destruction occurs in or after the first day of the 5th Lease Year prior to the expiration of the then Term (as it may have previously been extended by Tenant) and the cost of the restoration work (regardless of the availability of insurance proceeds) is reasonably estimated to exceed twenty five percent (25%) of the then applicable full replacement cost.

1006 Disbursement of Insurance Proceeds Upon Termination. If this Lease shall terminate following the occurrence of damage to or destruction of any Housing Improvements as provided in Section 1005 above, then all insurance proceeds recovered by Tenant or payable to Tenant on account of such damage or destruction under policies carried by Tenant (collectively, “Casualty Proceeds”), shall be distributed in the following order of priority:

(i) First, to the payment of all out of pocket third party costs and expenses, including reasonable attorneys’ fees, costs and disbursements, reasonably incurred in collecting the Casualty Proceeds;

(ii) Second, to the reimbursement of Tenant for any costs reasonably incurred by Tenant for demolition, restoration and removal work or emergency related work; and

(iii) Third, the balance of the Casualty Proceeds shall belong to Tenant provided Tenant shall be required to use a portion thereof to perform the obligations in Section 1007 if Tenant elects to terminate this Lease under Section 1005 (in the event that Landlord completes any of the work required by Section 1007, it shall be entitled to reimbursement for costs reasonably incurred).

1007 Removal of Debris. If this Lease shall terminate following the occurrence of damage to or destruction of the Housing Improvements as provided in Section 1005 above, Tenant shall have no obligation to restore or rebuild any Housing Improvements, but Tenant shall remove the debris and damaged portion of the Housing Improvements (including foundations) and restore the Premises or the applicable portion thereof to a neat, clean and safe condition, at Tenant’s cost and expense (but subject to reimbursement from the Casualty Proceeds).

1008 Obligation to Continue Paying Rent. Unless this Lease has been terminated pursuant to the provisions hereof, Tenant’s obligation to make payments of Additional Rent, and to perform all its other covenants and conditions shall not be affected by any damage or destruction of the Premises or Housing Improvements by any cause whatsoever, and Tenant hereby waives the provisions of any contrary statute or law now or hereafter in effect, including the provisions of California Civil Code Sections 1932, 1933(3) and (4) and 1942.

1009 Failure to Complete Restoration. Once Tenant commences restoration, it shall diligently pursue the work to completion.

1010 Disputes. In the event the parties are unable to agree upon: (a) whether the conditions provided in this Article 10 for the termination of this Lease have been satisfied; or

(b) the amount of proceeds to be paid to either party under this Article 10, the matter(s) in dispute shall be decided through the provisions of Section 1801 of this Lease.

1011 Survival. Landlord's and Tenant's rights and obligations under this Article 10, including their rights to receive proceeds, shall survive any termination of this Lease.

ARTICLE 11

RIGHT OF ENTRY

Upon the Effective Date of the Lease, Landlord hereby grants a right of entry to Tenant (as well as Tenant's employees, representatives, consultants and contractors) upon the Premises and the area of the County Property for the Parking Garage Improvements (as reflected on Exhibit A-2) for the following purposes: (i) performing intrusive tests or activities in preparation for construction of the Initial Project Improvements, (ii) relocating the existing water main line that currently runs through the northeast portion of the County Property, (iii) conducting inspections or other non-intrusive activities, and (iv) constructing the Parking Garage Improvements. Tenant shall provide the County with at least ten (10) business days written notice prior to commencing the activities described in (i) and (ii) above ("**ROE Notice**"). The ROE Notice shall include a reasonably detailed summary of the proposed activities, the schedule for performance of the activities, and a site plan showing the areas to be affected by the activities. County will provide written approval or disapproval of the ROE Notice, within five (5) business days of County's receipt of the ROE Notice, subject to County's modification of the proposed activities or schedule and subject to additional reasonable conditions of the Work. Following County's written approval, Tenant shall promptly notify County of any changes thereto. The foregoing right of entry shall be subject to all of the provisions of this Lease, including without limitation Section 503. The foregoing right of entry shall automatically terminate upon the completion of the Parking Garage Improvements and their acceptance by the County.

ARTICLE 12

REPAIRS, CHANGES, ALTERATIONS AND NEW CONSTRUCTION

1201 Repairs and Maintenance. Subject to the other provisions of this Lease, Tenant shall keep the Project in good operating order and condition, reasonable wear and tear excepted. The standard for maintenance and repair of the Project shall be the same as for other similar major affordable housing projects in Santa Clara County of similar size, and of comparable age. Tenant shall make all necessary repairs and perform all maintenance, interior and exterior, structural and non-structural, ordinary as well as extraordinary, whether contemplated or not contemplated at the time of signing of this Lease, to keep the Project to the standard described above in a well maintained, safe, clean and sanitary condition. The term "**repairs**" shall include replacements or renewals when reasonably necessary to satisfy the above standard, and all repairs made by Tenant shall be at least equal in quality and class to the original work. Tenant waives any rights created under any law now or hereafter in force to make repairs to the Project at Landlord's expense. From time-to-time during the Term, upon not less than 48 hours prior written notice from Landlord, Landlord may enter the Project during regular business hours, to determine if Tenant is in compliance with the requirements of this Article. If, following any

such inspection by Landlord, Landlord delivers notice of any deficiency to Tenant, Tenant shall promptly prepare and deliver to Landlord Tenant's proposed plan for remedying the indicated deficiencies. Landlord's failure to deliver, following any Landlord's inspection, any notice of deficiency to Tenant, shall not be deemed to be Landlord's approval of the then condition of the Project, nor Landlord's waiver of any default by Tenant under this Article 12.

1202 Changes and Alterations. Except as permitted by Section 1203 below, Tenant shall not make any changes, alterations, replacements or additions in, to or of the exterior of the Housing Improvements ("**Alterations**") without the prior written consent of Landlord, which Landlord shall not unreasonably withhold or delay, so long as all the following are complied with by Tenant:

- (a) Tenant shall pay all costs and expenses related to the Alterations;
- (b) The Alteration shall not result in a decrease in the value of the structural improvement to which it is being made;
- (c) The Alteration shall be for a use which is permitted hereunder and shall not be materially and adversely inconsistent with the Improvement Plan for the Premises;
- (d) Tenant shall obtain and pay for, all required permits and authorizations of any federal, state or municipal government or departments or subdivisions of any of them, having jurisdiction. Landlord shall join in the application for permits or authorizations whenever necessary. Landlord shall incur no liability or expense in connection with its cooperation and Tenant shall reimburse Landlord for Landlord's related reasonable attorneys' fees;
- (e) Any Alteration shall be made in a good and workmanlike manner and in accordance with all applicable permits and authorizations and building and zoning laws and with all other Applicable Laws;
- (f) During the period of construction of any Alterations, Tenant shall maintain or cause to be maintained applicable insurance described in Article 8 which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Project (including excavations, foundations and footings) under a broad form (or equivalent) builders' risk form; and
- (g) The provisions of Article 5 shall be met (to the extent applicable).

1203 Exceptions to Consent Requirement. The foregoing notwithstanding, Tenant shall not be required to obtain Landlord's prior written consent to any Alterations having a cost estimate (as defined in Section 503.6.1) of less than One Million Dollars (\$1,000,000) so long as all the following requirements are met:

- (a) The Alterations are non-structural;
- (b) The Alterations are not visible from the exterior of any building on the Premises; and

(c) All the provisions of Section 503.1, Section 503.2, and Section 503.3 shall be met (to the extent applicable).

Notwithstanding the foregoing, Tenant shall deliver to Landlord at least fifteen (15) days before commencement of any Alteration written notice of the proposed work, a general description of the proposed work and sufficient information to permit Landlord to post a notice of non-responsibility on the Premises. Tenant shall deliver to Landlord within sixty (60) days following completion of the work, three sets of “As Built” plans for all work for which architectural drawings are required.

1204 No Right to Demolish. Notwithstanding any other provisions of this Article 12 and except as otherwise permitted in Section 1007, Tenant shall have no right to demolish any Housing Improvement, once built, unless Tenant shall have received the prior written consent of Landlord, which Landlord may withhold in its discretion it being agreed that Landlord has entered into this Lease in material reliance on Tenant’s covenants to construct the Initial Project Improvements in accordance with the Improvement Plan and to operate and maintain the Housing Improvements in accordance with the provisions of this Lease. Any approved demolition and reconstruction shall be done in conformity with Sections 502 and 503 of this Lease, as applicable.

1205 Common Area Maintenance. Landlord and Tenant shall maintain their respective common areas on the County Property, such as entrance roads and driveways, as and to the extent required by the REA.

ARTICLE 13

EMINENT DOMAIN

1301 Eminent Domain.

1301.1 Definitions. The following definitions shall apply in construing the provisions of this Article 13:

1301.1.1 Award. “**Award**” means all compensation, damages or interest, or any combination thereof, paid or awarded for the Taking, whether pursuant to judgment, by agreement, or otherwise.

1301.1.2 Notice of Intended Taking. “**Notice of Intended Taking**” means any notice or notification on which a reasonably prudent person would rely and would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take.

1301.1.3 Partial Taking. “**Partial Taking**” means any Taking that is neither a Total Taking nor a Substantial Taking.

1301.1.4 Substantial Taking. “**Substantial Taking**” means the Taking of so much of the Project that the remaining portion thereof would not be economically and feasibly usable by Tenant for the then existing uses and purposes of the Project, but shall exclude a Temporary Taking.

1301.1.5 Taking. “**Taking**” means any taking of or damage to, including severance damage, all or any part of the Project or any interest therein by the exercise of the power of eminent domain, or by inverse condemnation, or a voluntary sale, transfer or conveyance under threat of condemnation in avoidance of the exercise of the power of eminent domain or while condemnation proceedings are pending.

1301.1.6 Temporary Taking. “**Temporary Taking**” means the Taking of any interest in the Project for a period of less than one (1) year.

1301.1.7 Total Taking. “**Total Taking**” means the Taking of the fee title to all, or substantially all, of the Project.

1301.2 Notice. The party receiving any notice of the kind specified below shall promptly give the other party written notice and a copy of any:

- (a) Notice of Intended Taking;
- (b) Service of any legal process relating to condemnation of all or any portion of the Project;
- (c) Notice in connection with any proceedings or negotiations with respect to such a condemnation; or
- (d) Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

Landlord and Tenant, and any of their respective secured lenders, each shall have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of their respective claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the mutual agreement of Landlord and Tenant and their secured lenders. Landlord and Tenant each agree to sign, acknowledge and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

1301.3 Total or Substantial Taking. In the event of a Total Taking or Substantial Taking, this Lease shall terminate, and Tenant’s interest in this Lease and all obligations of Tenant subsequently accruing hereunder shall cease, as of the first to occur of (i) the date of the vesting of title in the condemning authority or (ii) the date actual physical possession of all or part of the Project is taken by the condemning authority prior to the date of vesting of title. Tenant’s obligations to pay Additional Rent shall terminate as of such date.

1301.4 Award for Total or Substantial Taking. In the event of a Total Taking or Substantial Taking, the award shall be apportioned as follows:

FIRST: To Landlord and Tenant, payment for all out of pocket third party costs and expenses, including reasonable attorneys' fees, costs and disbursements, reasonably incurred in collecting the award;

SECOND: To Landlord the fair market value of its fee interest in the Premises (subject to Tenant's leasehold interest in the Premises) and Landlord's reversionary interest in the Housing Improvements;

THIRD: To Tenant that portion of the award attributable to the value of Tenant's leasehold interest in the Premises and fee interest in the Housing Improvements;

FOURTH: To Landlord any severance damages;

FIFTH: To Landlord, the residual value, if any, of the Housing Improvements valued as of the date the Term was scheduled to expire, and discounted to their present value; and

SIXTH: To Tenant, the entire balance of the award.

1301.5 Temporary Taking. In the event of a Temporary Taking that ends no later than one (1) year before the end of the Term, Tenant shall be entitled to the whole award, Landlord shall assign to Tenant all of Landlord's rights, title and interest in and to the entirety of the award, and this Lease shall remain in full force and effect.

1301.6 Partial Taking. In the event of a Partial Taking, this Lease shall remain in full force and effect, covering the remainder of the Premises, except that this Lease shall be deemed amended such that the definition of the "**Premises**" shall include only that portion of the land described in Exhibit A attached that is not taken, and the Base Rent shall be reduced to reflect, if any, the negative impact on Tenant's business operation as a result of such Partial Taking, which shall be determined with regard to the utility to Tenant of the area taken. In no event shall Tenant be entitled to any rent reduction for any Taking of a de minimis portion of the Premises or for road widening, landscaping or other similar purposes. Any Lease amendment and rental adjustment shall become effective as of the earlier of (a) the date of the vesting of title in the condemning authority of the portion of the Premises taken, or (b) the date actual physical possession of the portion of the Premises is taken by the condemning authority.

In the event of a Partial Taking, Tenant, at its sole cost and expense subject to (and only to the extent of) receipt of an award by Tenant from the Taking agency specifically earmarked for severance damages, and Tenant's offset against such specific award of all costs incurred in procuring such award, shall either (i) restore the Housing Improvements to a complete architectural unit, consistent with the requirements of this Lease, to the maximum extent feasible, or (ii) demolish and remove all or a portion of the Housing Improvements situated on the portion of the Premises not taken and restore such portion to a clean and neat condition. For the purposes of this Section 1301.6, "**de minimus**" is defined as a Taking of two percent (2%) or less of the Project.

1301.6.1 Award on Partial Taking. In the event of a Partial Taking, the award shall be applied first to the demolition and removal of Housing Improvements and restoration, repair and replacement by Tenant of the Premises and Housing Improvements that were not

taken, and the unexpended portion of the award, if any, shall be divided between Landlord and Tenant in the manner provided by Section 1301.4 above.

1301.6.2 Partial or Temporary Taking in Last Five Years. If a Partial Taking occurs during the last five (5) years of the Term and the reasonably estimated cost of reconstruction work exceeds ten percent (10%) of the replacement value of the Housing Improvements, or if a Temporary Taking occurs during the last five (5) years of the Term, Tenant shall have the right and option to treat the Partial Taking or Temporary Taking as a Substantial Taking by giving written notice thereof to Landlord no later than the earlier of: (a) the date of vesting of title in the condemning authority of the portion of the Premises taken, or (b) the date upon which the condemning authority takes physical possession of such portion of the Premises. If Tenant does give such notice the Partial Taking or Temporary Taking shall be considered as a Substantial Taking and the Taking shall be subject to the provisions of Section 1301.3 and Section 1301.4.

1302 Participation in Settlement Negotiations. Landlord and Tenant shall both have the right to participate in the negotiation, settlement or compromise of all awards, except for Temporary Taking awards. Tenant shall have the sole right to negotiate, settle and compromise any award for a Temporary Taking.

1303 Survival. Landlord's, Tenant's rights and obligations under this Article 13, including their rights to receive proceeds, shall survive any termination of this Lease.

ARTICLE 14

ENCUMBRANCES

1401 Definitions. The following terms shall have the following meanings:

1401.1 "Affordability Restrictions" means limitations imposed, from time-to-time, upon Tenant and/or upon the Premises or the Housing Improvements, upon any of the income levels of occupants of residential units in the Project or upon the rents that may be charged to occupants of residential units in the Project. Affordability Restrictions may be imposed in various contexts including, among others, pursuant to applicable Internal Revenue Code sections governing the tax credits, or by a lender in connection with the financing.

1401.2 "Leasehold Encumbrance" means any deed of trust, mortgage, assignment, security interest, lien or other encumbrance in or against Tenant's interest in this Lease, the Project and/or the Personal Property.

1401.3 "Leasehold Lender" means the holder or beneficiary under any Leasehold Encumbrance.

1401.4 "Loan" means a secured loan made to Tenant in connection with the Project.

1401.5 “**Loan Documents**” mean the loan agreement, promissory note, deed of trust, assignment, security agreement, Affordability Restrictions and/or other documents evidencing Tenant’s obligations with respect to any applicable Loan.

1401.6 “**Project Loans**” means all Loans made in connection with the initial financing and any Restructuring and secured by Leasehold Encumbrances as permitted below.

1402 Initial Financing; Restructuring. Tenant shall have the right to place Leasehold Encumbrances and Affordability Restrictions on the leasehold estate and the Housing Improvements without the consent of Landlord for purposes of financing the development of the Project and to refinance those loans. Prior to the commencement of construction of the Housing Improvements, Tenant will provide Landlord with the initial financing structure and pro forma operating statements, including the name of the proposed lender(s), and the amount, type and terms of the Project Loans. In the event Tenant has the opportunity to modify, restructure or replace the initial financing on terms that would result in an overall reduction in the debt service payable by the Project or other economic benefit to the Project (a “**Restructuring**”), Landlord shall cooperate with and assist Tenant in connection with the Restructuring; provided that Landlord’s reasonable out-of-pocket costs and expenses, including without limitation reasonable attorneys’ fees, shall be paid by Tenant. Without limiting the generality of the foregoing, Landlord shall consent to changes in this Lease, the applicable Loan Documents and/or any other instruments to which Landlord is a party, on reasonable terms and conditions to be negotiated with the prospective Lenders and/or tax credit investor reasonably and in good faith; provided, however, that Landlord shall not be obligated to agree to any changes that: (i) reduce the amount and terms of Rent payment (except for Project Loans), (ii) modify the Permitted Use hereunder, (iii) require subordination of Landlord’s fee interest in the Premises or otherwise diminish Landlord’s economic benefits under this Lease, (iv) increase the Term, (v) increase the liabilities of Landlord under this Lease; or (vi) impair the rights of Landlord under this Lease; and Landlord shall not be required to provide any legal opinions with regard to any Restructuring.

1403 Leasehold Encumbrances. Tenant shall have the right, at any time and from time-to-time during the Term, to procure one or more Loans and/or enter into any other arrangements which would have the effect of creating one or more Leasehold Encumbrances. Before entering into a Leasehold Encumbrance, Tenant shall give Landlord written notice and shall accompany the notice with a true and correct copy of the Leasehold Encumbrance and related Loan Documents. Any Leasehold Encumbrance shall be subject to the following terms and conditions:

1403.1 No Merger. So long as any Leasehold Encumbrance shall encumber Tenant’s leasehold estate, there shall be no merger of this Lease or any interest in this Lease, nor of the leasehold estate created hereby, with the fee estate in the Premises.

1403.2 Non-Subordination of Fee. Nothing in this Lease shall be construed as an agreement by Landlord to subordinate its fee interest in the Premises, its interest in any Rent or the Permitted Use. Except as expressly set forth in this Article 14 or elsewhere in this Lease, no Leasehold Encumbrance shall impair Landlord from enforcing its rights and remedies under this Lease or provided by law.

1404 Leasehold Lender Protections. Landlord and Tenant expressly agree that a Leasehold Lender making a Loan secured by a Leasehold Encumbrance shall have the following rights and protections:

1404.1 Notices. Landlord shall give the Leasehold Lender a duplicate copy of any and all notices Landlord may from time-to-time give to or serve on Tenant pursuant to this Lease, such duplicate copy to be given concurrently with the notice given to or served on Tenant, so long as Tenant or the Leasehold Lender shall at all times keep Landlord informed, in writing, of the name and mailing address of the Leasehold Lender and any changes in the Leasehold Lender's mailing address. Landlord shall have no liability to the Leasehold Lender for any failure to give any such notices to the Leasehold Lender. Any notices or other communications required or permitted by this or any other provision of this Lease or by law to be served on or given to the Leasehold Lender by Landlord may be delivered in the manner specified in Section 1805 below. Tenant shall deliver to Landlord, promptly after execution, true and complete copies of the Leasehold Encumbrance and all other documents given to evidence or secure the Loan, and any subsequent amendments, modifications or extensions thereof.

1404.2 Modification or Termination of Lease. Subject to the Leasehold Lender's prior consent and approval, Landlord and Tenant agree so long as a Leasehold Lender, or either of its successor or assigns holds a Leasehold Encumbrance and regulatory agreement encumbering the Premises, no voluntary termination of the Lease by Tenant, and no subordination, cancellation, surrender, of the Lease shall be effective without the prior written consent of the Leasehold Lender, which shall not be unreasonably withheld or delayed. Except for any termination of this Lease by Landlord due to an Event of Default in accordance with the provisions of this Section 1404, no merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of the Leasehold Lender. If Landlord transfers, conveys, sells, hypothecates or assigns its interest, or any portion thereof, in the Leased Premises, Landlord will require that any purchaser, assignee or transferee expressly assume all of the obligations of Landlord under the Lease by a written instrument recordable in the Official Records.

1404.3 Leasehold Lender Remedies. Landlord agrees that the Leasehold Lender shall have the right at any time during the Term to:

(a) do any act or thing required of Tenant under this Lease, and any such act or thing done and performed by such Leasehold Lender shall be as effective to prevent a termination of this Lease and a forfeiture of Tenant's rights under this Lease as if done by Tenant itself; and/or

(b) realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded at law or in equity, or under any Leasehold Encumbrance, and pursuant to such proceedings to: (i) transfer, convey or assign Tenant's leasehold interest to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted pursuant to court order or pursuant to a power of sale contained in the Leasehold Encumbrance; or (ii) acquire and succeed to the interest of Tenant under this Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted pursuant to

court order or pursuant to a power of sale contained in the Leasehold Encumbrance, or by assignment or other conveyance in lieu of foreclosure; or (iii) cause the subsequent transfer, conveyance or assignment by the Leasehold Lender of the leasehold estate to a third party (a “**Subsequent Transferee**”) after the Leasehold Lender has acquire such leasehold estate at such foreclosure sale or by assignment or other conveyance in lieu of foreclosure.

Foreclosure of a Leasehold Encumbrance or any sale thereunder, whether by judicial proceedings or pursuant to any power of sale contained therein, or any assignment or other conveyance in lieu of foreclosure, shall not require the consent of Landlord or constitute an Event of Default under this Lease. Upon any such foreclosure, sale, assignment or other conveyance, Landlord shall recognize Leasehold Lender, any grantee of a conveyance in lieu of foreclosure, or any foreclosure sale purchaser, or any Subsequent Transferee, as the Tenant hereunder.

1404.4 Cure of Tenant Default. After the expiration of the grace period given Tenant under the Lease to cure the default, Landlord shall not terminate the Lease on account of such default but shall give the Leasehold Lenders a written notice (a “**Termination Notice**”) that Tenant has failed to cure the default within the grace period and that, on account thereof, Landlord intends to terminate the Lease, which notice shall set a termination date not earlier than sixty (60) days after Leasehold Lender's receipt of the Termination Notice. The additional cure period afforded to the Leasehold Lenders and rights inherent therein, are personal to the respective Leasehold Lender and such rights, by the terms of this Lease, do not inure to the Tenant. No Termination Notice shall be effective to terminate the Lease if:

(a) Within sixty (60) days after receipt of the Termination Notice, a Leasehold Lender cures any non-monetary default which can be cured by payment or expenditure of money or without possession of the Leased Premises; or provides reasonable assurance and undertakings for the cure of such default. To cure, the Leasehold Lender may make any repair or improvement, do any other act or thing required of Tenant under the Lease, or do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions to prevent termination of the Lease. The Leasehold Lender and their agents and contractors will have full access to the Premises for purposes of accomplishing the curing of defaults under the Lease. Any of the foregoing done by a Leasehold Lender shall be as effective to prevent a termination of the Lease as the same would have been if done by Tenant; or

(b) The Leasehold Lender commences and diligently pursues to completion proceedings for foreclosure and sale under a Leasehold Mortgage or assignment or transfer in lieu of foreclosure consistent with the requirements of Section 1404.5. The Leasehold Lender shall not be required to perform any act which is not susceptible to performance by the Leasehold Lender, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which is Tenant's failure to pay any lien, charge or encumbrance which is junior in priority to the respective Lender's Leasehold mortgage, or to pay any amount owed under an indemnity of Landlord by Tenant based on an event which occurred before Leasehold Lender took possession of the Project. The foregoing provisions of this Section 1404.4 shall not be construed to impose any personal liability on the Leasehold Lender

for any failure to cure, or election not to cure, any monetary or non monetary default of Tenant. No action taken by a Leasehold Lender to enforce its rights under any Leasehold Encumbrance, including, without limitation, any actions taken to collect any amounts due and owing to the Leasehold Lender, or any action to appoint a receiver for the Project or to otherwise protect the security of the Leasehold Encumbrances, shall constitute or result in a breach or violation of the Lease.

1404.5 Leasehold Lender Right to Forestall Termination. Landlord and Tenant agree that the Leasehold Lender may forestall termination of this Lease by Landlord by commencing foreclosure proceedings or assignment or transfer in lieu of foreclosure (whether judicially or by exercise of a power of sale) within thirty (30) days after Landlord gives Leasehold Lender a notice of default, so long as: (i) Leasehold Lender, following commencement of such, diligently pursues to completion (subject to normal and customary postponements and compliance with any judicial or statutory stays or orders, including without limitation any stays or orders arising in connection with any bankruptcy or insolvency proceedings affecting Tenant, relating to the timing of or the right to conduct foreclosure or other lien enforcement proceedings); and (ii) Leasehold Lender performs all of the terms and conditions of this Lease requiring payment or expenditure of money by Tenant, including the payment of all unpaid Rent due hereunder, until the foreclosure proceedings, assignment or transfer in lieu are complete or are discharged by redemption, satisfaction, payment or conveyance of the leasehold estate to Leasehold Lender or to any other person or party.

1404.6 Leasehold Lender Liability. Subject to compliance with the provisions of Section 1404.5, the Leasehold Lender (or Lender Affiliate, if applicable) shall not be liable to Landlord as Transferee of Tenant's interest under this Lease unless and until such time as the Leasehold Lender (or Lender Affiliate, if applicable) acquires all rights of Tenant under this Lease through foreclosure or other proceedings in the nature of foreclosure, by deed or voluntary assignment in lieu thereof, or as a result of some other action or remedy provided by law or by any Leasehold Encumbrance. At no time shall the Leasehold Lender (or Lender Affiliate, if applicable) be liable for any breach or default by Tenant prior to the time the Leasehold Lender (or Lender Affiliate, if applicable) acquires all rights of Tenant hereunder. Subject to compliance with the provisions of Section 1504 relating to a subsequent Transfer by the Leasehold Lender (or Lender Affiliate, if applicable), in its capacity as a successor Tenant, of its interest in this Lease (provided that any provisions limiting a Transfer occurring prior to Project stabilization shall not apply to a Leasehold Lender which is financing construction of the Housing Improvements (or the Lender Affiliate of such Leasehold Lender, if applicable) but shall apply to any subsequent Transfer by the Transferee of such Leasehold Lender (or Lender Affiliate, if applicable)), the Leasehold Lender (or Lender Affiliate, if applicable) shall remain liable to Landlord for the obligations of the Tenant under this Lease only so long as the Leasehold Lender (or Lender Affiliate, if applicable) remains the owner of the leasehold estate, and following such Transfer by the Leasehold Lender (or Lender Affiliate, if applicable), the Leasehold Lender or Lender Affiliate shall have no further obligation or liability to Landlord except solely for obligations and liabilities arising or accruing prior to the effective date of the Transfer. In the event that the Leasehold Lender (or Lender Affiliate, if applicable) subsequently Transfers its interest under this Lease after acquiring all rights of Tenant hereunder and in connection with any such Transfer the Leasehold Lender takes back a mortgage, deed of trust, security agreement, lien or other encumbrance in or against the Tenant's interest in this Lease,

the Housing Improvements and/or the Personal Property to secure a portion of the purchase price payable to Leasehold Lender for such Transfer, then such mortgage, deed of trust, security agreement, lien or other encumbrance shall also constitute a Leasehold Encumbrance and the Leasehold Lender shall be entitled to the benefits of this Lease intended for the benefit of the holder of a Leasehold Encumbrance.

1404.7 Replacement Lease. If this Lease is terminated prior to the Expiration Date for any reason, including without limitation the termination by Landlord on account of an Event of Default or the rejection by a trustee of Tenant in bankruptcy or by Tenant as a debtor in possession, Landlord shall execute a new lease for the Premises with the Leasehold Lender (or Lender Affiliate, if applicable) as Tenant, if so requested by the Leasehold Lender, within sixty (60) days following the date of the termination, subject to the following:

(a) the new lease shall: (i) be for a term beginning on the date this Lease was so terminated and ending on the same date the Term of this Lease would have ended had this Lease not been terminated; (ii) provide for the payment of Rent at the same rate that would have been payable under this Lease during the remaining Term of this Lease had this Lease not been terminated; and (iii) otherwise contain the same terms and conditions as are contained in this Lease (except for any requirements or conditions which have been satisfied by Tenant prior to the termination);

(b) upon execution of the new lease by Landlord, the Leasehold Lender (or Lender Affiliate or Subsequent Transferee, if applicable) shall remedy, or agree in writing to remedy, as promptly as practicable, any defaults under this Lease committed by the former Tenant that can be remedied by a party other than the former Tenant;

(c) as between Landlord, Tenant and the Leasehold Lender (or Lender Affiliate or Subsequent Transferee, if applicable), and with respect to all third parties having actual or constructive notice of the terms of this Lease, the new lease shall have the same priority as this Lease, shall be subject to all Project Sub-Tenant Leases, and shall be assignable by the Leasehold Lender as provided in this Lease; and

(d) together with the execution and delivery of the new lease, Landlord shall confirm and acknowledge, by such means as is customary or may be reasonably required by a reputable title insurance company to insure the leasehold estate of Leasehold Lender (or Lender Affiliate, if applicable) created by the new lease and Leasehold Lender's (or Lender Affiliate's, if applicable) ownership of the Housing Improvements for the term of the new lease, that as between the Leasehold Lender (or Lender Affiliate, if applicable) and Landlord, and all persons claiming by, through or under Landlord (including without limitation the holder of any mortgage or other encumbrance against Landlord's fee interest in the Premises), the Leasehold Lender (or Lender Affiliate, if applicable) has title to the Housing Improvements and Personal Property for the term of the new lease; provided, however, that such confirmation and acknowledgment of title shall not negate or otherwise adversely affect Landlord's reversionary interest in the Project. Ownership of all Housing Improvements shall be deemed to have been transferred directly to the Leasehold Lender (or Lender Affiliate, if applicable) and the provisions of Section 702.1 causing such Housing Improvements to become

the property of Landlord in the event of a termination of this Lease shall be ineffective as applied to any such termination.

The provisions of this Section 1404.7 shall survive any termination of this Lease prior to the Expiration Date for any reason, for a period of sixty (60) days following the date of the termination, and shall constitute a separate agreement by Landlord for the benefit of and enforceable by the Leasehold Lender.

1404.8 Leasehold Lender Further Defined; Lender Affiliate. As used in this Lease, the term “**Leasehold Lender**” shall mean not only the entity that loaned money to Tenant and is named as beneficiary, mortgagee, assignee, secured party or security holder in any Leasehold Encumbrance, but also all subsequent assignees and holders of the security interest created by such instrument; and the term “**Lender Affiliate**” shall mean any partnership, limited liability company, corporation or other entity that controls, is controlled by, or is under common control with any Leasehold Lender.

1404.9 Cooperation; Amendment. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time-to-time any provision which may be reasonably requested by any Leasehold Lender in order to implement the provisions and intent of this Article 14; provided, however, that any such amendment shall not: (i) reduce the amount and terms of Rent payment (except for Project Loans), (ii) modify the Permitted Use hereunder, (iii) require subordination of Landlord’s fee interest in the Premises or otherwise diminish Landlord’s economic benefits under this Lease, (iv) increase the Term, (v) increase the liabilities of Landlord under this Lease; or (vi) impair the rights of Landlord under this Lease; and Landlord shall not be required to provide any legal opinions with regard to such loan.

1404.10 Notices to Landlord. Any Leasehold Encumbrance shall by its terms provide that the holder of the Leasehold Encumbrance shall give Landlord written notice of any default of Tenant under such Leasehold Encumbrance contemporaneously with the giving of such notice to Tenant; provided, however, that no failure by the Leasehold Lender to give such notice shall deprive it of any rights or benefits provided by this Section 1404 or elsewhere in this Lease or impair the Leasehold Lender’s ability to exercise its rights under the Loan Documents, and provided, further, that no legal consequences shall arise by reason of Leasehold Lender’s failure to give such notice to Landlord. Tenant shall give Landlord a copy of any notice of default received from any Leasehold Lender promptly after receipt thereof.

1404.11 Landlord’s Cure. Landlord agrees that if Landlord cures Tenant's failure to make any payment due under a Leasehold Encumbrance, it shall seek reimbursement of amounts so paid solely from Tenant and the Leasehold Lender shall have no obligation to pay such amounts to Landlord.

ARTICLE 15

ASSIGNMENT, TRANSFER, SUBLETTING

1501 Restrictions on Transfer by Tenant. Tenant acknowledges that the qualifications and identity of Tenant are of particular concern to Landlord (i) in view of the

importance of the development of the Premises to Landlord and the general welfare of the community; (ii) because of Landlord's desire that the Project be operated by an organization with demonstrated successful experience and success in developing affordable housing; (iii) because of the County's desire for the Project to be a first class affordable housing project; and (iv) in light of the County's desire for the operation on the Premises to be compatible with the County's adjacent Health Clinic use. Tenant further recognizes that the Landlord's approval of the proposed Developer's qualifications, reputation, experience and identity is a material consideration for Landlord in entering into this Lease with Tenant. Tenant acknowledges that the restrictions on Transfer contained in this Article 15 are reasonable. The provisions of this Article 15 apply to any subsequent Transfer involving Tenant's interest in the Project.

1502 Definition of Transfer. "Transfer" means any of the events described below, whether the same occur voluntarily, involuntarily, by operation of law, or otherwise:

1502.1 Transfer of Interest in the Premises or Project. Tenant's assignment, sublease, transfer, or conveyance of all, or any portion, of its interest in the Premises, the Project or this Lease.

1502.2 Encumbrance. Except for Project Loans and Affordability Restrictions in accordance with Article 14, Tenant's hypothecation or encumbrance of its interest in this Lease.

1503 No Transfer Without Consent. Except as otherwise provided in Section 1504.3, Tenant shall not make or permit any Transfer except with Landlord's prior written consent, which shall not be unreasonably withheld or delayed. Each Transfer shall comply with all requirements set forth elsewhere in this Lease. No voluntary or involuntary assignee or successor in interest of Tenant pursuant to a Transfer shall acquire any rights or powers under this Lease except as expressly set forth herein, and any Transfer without Landlord's consent shall constitute an Event of Default and shall be voidable at Landlord's option.

1504 Procedure.

1504.1 Transfer Request. With respect to each Transfer as to which Landlord's approval is required hereby, Tenant shall send to Landlord written request for Landlord's approval of the Transfer (a "Transfer Request") specifying the name and address of the proposed transferee and its legal composition (if applicable). Each Transfer Request shall be accompanied by all of the following:

(a) An audited financial statement (or if no audited financial statement is available, a reviewed financial statement) of the proposed transferee for the three (3) most recent calendar or fiscal years prepared in accordance with generally accepted accounting procedures by a nationally or regionally recognized certified public accounting firm, certified as true and correct by the proposed transferee, sufficiently current and detailed to permit evaluation of the proposed transferee's assets, liabilities and net worth;

(b) A description of the nature of the interest proposed to be transferred, the portion or portions of the Project affected by the Transfer, and the proposed effective date of such Transfer;

(c) A true and complete copy of the proposed Assumption Agreement described in Section 1510;

(d) A complete history of the proposed transferee describing its background, its current business operations and the background of the principals or personnel to be involved in the day to day operation of the Project and stating whether the proposed transferee ever filed for bankruptcy or had projects that were foreclosed;

(e) A description of any substantial litigation in which the transferee has been involved within the preceding sixty (60) months;

(f) A description of all consideration to be given on account of the Transfer; and

(g) Any such other information as reasonably requested by Landlord within ten (10) days following the receipt of the above information, in order for it to make an informed decision whether or not to approve or disapprove the Transfer.

1504.2 Approval of Landlord. Within thirty (30) days following receipt of all the information referred to in Section 1504.1, Landlord shall approve or disapprove a Transfer Request, and if Landlord disapproves the Transfer Request, it shall provide a reasonably detailed written statement of the reasons for the disapproval. If Landlord fails to give Tenant written notice of its approval or disapproval within the thirty (30) day period, Tenant may provide Landlord a second request for approval. If the second request for approval clearly states that under this Section 1504.2 Landlord's failure to respond in writing to Tenant on or before ten (10) days after Landlord's receipt of the second notice will be deemed approval of the Transfer Request, then if Landlord again fails to respond to Tenant in writing on or before the tenth (10th) day after Landlord's receipt of the second notice, Landlord will be deemed to have approved the Transfer Request. Tenant shall pay the reasonable fees and charges of any accountants, attorneys and other consultants hired by Landlord to review and assess any proposed transferee.

1504.3 Transfer to Developer. Notwithstanding anything to the contrary in this Lease, Landlord acknowledges and agrees that the City shall have the absolute right to assign the Lease to Developer or any entity that is controlled or owned by the Developer (collectively, a "**Developer Entity**"). Tenant shall not be required to obtain Landlord's consent to Tenant's assignment of the Lease to a Developer Entity; provided, however, the City shall not be fully released from its obligations under this Lease until a Notice of Completion for the Housing Improvements has been recorded pursuant to Section 508 and the Landlord has delivered to Tenant a Certificate of Completion as provided in Section 508. Upon the satisfaction of the foregoing sentence, the City shall automatically be released from all obligations under the Lease. In connection with the Transfer to a Developer Entity, at least thirty (30) days before the Transfer: (i) Tenant shall notify Landlord of the pending Transfer to a Developer Entity; (ii) Tenant shall provide Landlord with all information Landlord reasonably requests regarding the transferee entity; and (iii) Tenant shall deliver to Landlord an assignment and assumption agreement signed by Tenant and the transferee consistent with the foregoing. In the event that Developer is unable or unwilling to complete the Initial Project Improvements, the City may substitute the Developer, prior to the Term Commencement Date, with a comparable high-

quality affordable housing developer following Landlord's reasonable review and approval, in which case "Developer" hereunder shall mean such approved affordable housing developer.

1505 Limitations.

1505.1 Non-Transfer Period. Following the City's assignment of the Lease to a Developer Entity, in no event will Tenant request Landlord to approve any Transfer involving an assignment, transfer or conveyance (excluding a Leasehold Encumbrance) of all or a portion of Tenant's interest in the Premises, the Project or this Lease prior to the date that all of the following have occurred:

(a) All Initial Project Improvements shall be complete and a certificate(s) of occupancy shall be issued with respect to all Initial Project Improvements; and

(b) All costs and expenses with regard to the Initial Project Improvements shall be paid in full, all lien periods shall have expired and there shall be no liens on the Parking Garage Improvements, or any portion thereof

1505.2 No Relief from Liability. If Landlord consents to a Transfer, Tenant shall not be released from its liability for the performance of all Tenant's obligations under this Lease. If Tenant makes a Transfer for which Landlord's consent is not required (except as provided in Section 1504.3 above), Tenant shall not be released from its liability for the performance of all Tenant's obligations under this Lease.

1505.3 No Consent If Bankruptcy. In no event shall Landlord be required to consent, or be deemed to consent, to a Transfer to a party then subject to any proceedings under any insolvency, bankruptcy or similar laws.

1505.4 Consent Not a Waiver. Landlord's consent to any one Transfer shall not constitute a waiver of the provisions of this Article 15 with regard to any subsequent Transfer.

1505.5 Threshold Criteria for Transfer. Although Landlord may withhold its consent to a proposed Transfer on any reasonable basis, Landlord shall be deemed to be reasonable in withholding its consent to a proposed Transfer if any of the following are not satisfied:

(a) The proposed transferee shall have a reputation and demonstrated experience comparable to the transferor's reputation and experience operating and managing high quality affordable housing projects;

(b) Tenant shall have obtained any consents required from any of the Approved Lenders, and shall have complied fully with all their requirements and the requirements of any Loan Documents relating thereto;

(c) The use of the Project as an affordable housing project after the Transfer shall remain unchanged; and

(d) Tenant shall be in compliance with all Affordability Restrictions.

1506 Subletting. The limitations on Transfer contained in this Article 15 shall not apply to, nor shall Landlord's approval be required in connection with, the subletting of all or any portion of the Project pursuant to residential subleases, licenses or concessions (the "**Project Sub-Tenant Lease(s)**"), provided that all of the following requirements are satisfied:

- (a) If a residential Project Sub-Tenant Lease,
 - (i) the Project Sub-Tenant Lease is in compliance with any Affordability Restrictions; and
 - (ii) the sublease term does not extend beyond the Expiration Date and specifically states that it will expire no later than the Expiration Date of this Lease; and
- (b) If a commercial Project Subtenant Lease,
 - (i) the Project Subtenant Lease is in substantially the form that Landlord previously has approved (which approval will not be unreasonably withheld or delayed);
 - (ii) the uses permitted under the Project Subtenant Lease shall be only those uses compatible with the permitted use defined in Section 601 and with adjoining uses of the Landlord's Retained Property.
 - (iii) the sublease premises will not be used for any purpose that requires use of Landlord's Retained Property for parking; and
 - (iv) the sublease term does not extend beyond the Expiration Date, and specifically states that it will expire no later than the Expiration Date

1506.1 Delivery to Landlord. At Landlord's request, Tenant shall provide Landlord with copies of any Project Sub-Tenant Leases (except for subleases of single residential units) or of any amendment or assignment thereof.

1507 Indemnity. Tenant hereby agrees to indemnify and defend Landlord against, and hold it harmless from, any loss (including penalties, fines, reasonable counsel fees and disbursements) in connection with a claim or action by a transferee or other party which arises out of Tenant's actions or failure to act with respect to a Transfer including Tenant's breach or default under any agreement relating to the Transfer. Tenant also hereby agrees to indemnify and defend Landlord against, and hold it harmless from, any loss (including penalties, fines, reasonable counsel fees and disbursements) arising out of a claim or action by a sub-tenant or otherwise arising in connection with subletting. These indemnities shall not apply to any loss caused by Landlord's default under this Lease or Landlord's gross negligence or willful misconduct.

1508 Involuntary and Other Transfers. Without limiting any other restrictions on Transfer contained in this Lease, no interest of Tenant in this Lease, the Premises or the Housing Improvements shall be assignable in the following manner:

(a) Under an order of relief filed, or a plan of reorganization confirmed, for or concerning Tenant by a bankruptcy court of competent jurisdiction under the federal bankruptcy act or under the laws of the State of California, whereby any interest in this Lease, the Premises or the Housing Improvements is assigned to any party which does not qualify as an approved transferee pursuant to this Lease unless such order is filed or such plan is confirmed in connection with an involuntary proceeding brought against Tenant and Tenant reacquires such transferred interest within forty five days after the date such order is filed or such plan is confirmed;

(b) If Tenant assigns substantially all of its assets for the benefit of its creditors;

(c) If an order of attachment is issued by a court of competent jurisdiction, whereby any interest in this Lease, the Premises or the Housing Improvements or substantially all of Tenant's assets are attached by its creditors and such order of attachment is not stayed within forty five (45) days after the date it is issued; or

(d) If a lien against any interest of Tenant in this Lease, the Premises or the Housing Improvements, is foreclosed so that such interest is vested in a party other than Tenant, except as otherwise provided in this Lease.

1509 Assumption Agreement. No Transfer involving Tenant's assignment, transfer or conveyance of all or any portion of its interest in this Lease, whether an Approved Transfer or one to which Landlord has consented, shall be effective until Landlord shall have received an assumption agreement, executed by the transferor and the proposed transferee, in form reasonably acceptable to Landlord.

ARTICLE 16

BREACHES, REMEDIES AND TERMINATION

1601 Event of Default. Tenant shall be in default under this Lease on the occurrence of any of the following ("Events of Default"):

1601.1 Monetary Obligation. Tenant fails to pay any monetary obligation when due, and such failure shall continue for thirty (30) business days after Tenant receives Notice of Breach (as defined in Section 1602.1); or

1601.2 Failure to Commence Construction. Tenant fails to commence construction on the Initial Project Improvements in accordance with Schedule 2, subject to extension for Unavoidable Delays and notice and cure rights as provided for in Section 202.1; or

1601.3 Failure to Diligently Pursue Construction. Tenant fails to diligently and continuously pursue construction of the Initial Project Improvements to completion, subject to extension for Unavoidable Delays and such failure continues for thirty (30) days after Tenant receives Notice of Breach; provided, however, that if such failure to pursue construction cannot be cured within thirty (30) days, then it shall not be an Event of Default unless Tenant fails to commence within thirty (30) days after it receives the Notice of Breach to cure the same or,

thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence; or

1601.4 Bankruptcy. Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or Tenant admits in writing its inability to pay its debts generally as they become due; or

1601.5 Reorganization. A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, unless the order, judgment or decree is vacated within forty five (45) days after the first date of entry thereof, or any trustee receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof shall be appointed without the consent or acquiescence of Tenant, unless such appointment is vacated within forty-five (45) days after the first date of entry thereof, (which forty-five (45) day period shall be extended in all cases during any period Tenant is diligently pursuing a bona fide appeal); or

1601.6 Attachment. A writ of execution or attachment or any similar process shall be issued or levied against all or any part of the interest of Tenant in the Project, unless the execution, attachment or similar process is released, bonded, satisfied, or vacated or stayed within forty five days after its entry or levy, (which forty-five (45) day period shall be extended during any period in which Tenant is diligently pursuing a bona fide appeal); or

1601.7 Loans. Tenant shall be in default under any Loan secured by a Leasehold Encumbrance, and such default shall continue for ten (10) business days after Tenant receives Notice of Breach. Tenant shall be deemed to be in default under a Loan at any time that a lender shall have sent a written notice so stating or at any time that a lender records a Notice of Default in the Official Records; or

1601.8 Failure to Carry Insurance. Tenant fails to continuously maintain insurance coverage in accordance with Article 8 or fails to deliver a copy of a policy of insurance complying with the requirements of Article 8, and Tenant fails to remedy the default within fifteen (15) days after Tenant receives Notice of Breach; or

1601.9 Transfer. Tenant Transfers all or any portion of Tenant's interest in the Premises, the Housing Improvements or in this Lease in violation of the provisions of Article 15; or

1601.10 Non-Monetary Obligations. Tenant is in default in any other of its other promises, covenants or agreements contained herein (including Section 601) and Tenant has failed to cure such default within sixty (60) days after Tenant receives Notice of Breach;

provided, however, that if such a default with due diligence cannot be cured within sixty (60) days, then it shall not be an Event of Default unless Tenant fails to commence within sixty (60) days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence.

1602 Notice and Opportunity to Cure.

1602.1 Notice of Breach. A party shall deliver to the non-performing party a written request to perform or remedy (the “**Notice of Breach**”), stating clearly the nature of the obligation which such non-performing party has failed to perform. If Tenant is afforded a cure period for such failure, the Notice of Breach shall state the applicable cure period, if any, provided hereunder.

1602.2 Failure to Give Notice of Breach. The failure of a party to give, or delay in giving, Notice of Breach shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Delays by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any actions or proceedings which it may deem appropriate to protect, assert or enforce its rights or remedies.

1603 Remedies Upon Default.

1603.1 Landlord’s Remedies. If an Event of Default occurs (except as provided in Section 202.1), Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Lease to which Landlord may resort cumulatively or in the alternative:

1603.1.1 Landlord Right to Continue Lease. Landlord may elect to keep this Lease in effect and enforce by an action at law or in equity all of its rights and remedies under this Lease, including (i) the right to recover Rent (if any) as it comes due by appropriate legal action, and (ii) the right to make payments required of Tenant or perform Tenant’s obligations and be reimbursed by Tenant for the cost thereof with interest as provided in Section 1603.1.4. For so long as this Lease continues in effect, Landlord may enforce all of Landlord’s rights and remedies under this Lease, including the right to recover all Rent (if any) as it becomes due hereunder.

1603.1.2 Terminate. Landlord may terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date set forth for termination in such notice. Any termination under this Section 1603.1.2 shall not relieve Tenant from its obligation to pay sums then due Landlord or from any claim against Tenant for damage or rent previously accrued or then accruing. Upon Lease termination hereunder, in accordance with applicable law Landlord may re-enter the Project and take possession thereof, and, except as otherwise provided herein, remove all persons and property therefrom, and store such property at Tenant’s risk and for Tenant’s account, and Tenant shall have no further claim thereon or hereunder. In no event shall this Lease be treated as an asset of Tenant after any final adjudication in bankruptcy except at Landlord’s option so to treat the same but no trustee, receiver, or liquidator of Tenant shall have any right to disaffirm this Lease.

1603.1.3 No Deemed Termination. This Lease shall not terminate (except by an exercise of Landlord's right to terminate under Section 1603.1.2) unless Landlord, at Landlord's option, elects to terminate Tenant's right to possession or, at Landlord's further option, by the giving of any written notice (including any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate Tenant's right to possession. For the purposes of this Lease, the following shall not constitute termination of Tenant's right to possession: (i) acts of maintenance or preservation or efforts to relet the Project; or (ii) the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease; or (iii) any other action by Landlord intended to mitigate the adverse effects of any breach of this Lease by Tenant.

1603.1.4 Landlord Rights to Perform. Upon the occurrence and continuance of an Event of Default, and without waiving or releasing Tenant from any obligation of Tenant hereunder, Landlord may (but shall not be required to) make such payment or perform such act on Tenant's part to be made or performed under this Lease, or pay for and maintain such insurance coverage required under Article 8, and Landlord may enter the Project for such purpose and take all such action thereon as may be reasonably necessary therefor. All sums paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act (together with interest thereon at the Default Rate from the respective dates of Landlord's making of each such payment until paid) shall constitute Additional Rent which Tenant shall pay to Landlord within thirty (30) days after receipt of Landlord's demand therefor and documentation of costs incurred.

1603.2 Damages Upon Termination. If Landlord terminates this Lease, Landlord may recover from Tenant damages in an amount as set forth in California Civil Code Section 1951.2 ("**CC 1951.2**") as in effect on the Term Commencement Date. For purposes of computing damages pursuant to CC 1951.2, the term "rent" means the unpaid Base Rent (if any) and Additional Rent. Landlord's CC 1951.2 damages shall include:

(a) The worth at the time of award of the unpaid rent which is due, owing and unpaid by Tenant to Landlord at the time of termination;

(b) The worth at the time of award of the amount by which the unpaid rent which would have come due after termination until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss which Tenant proves could be reasonably avoided; and

(d) All other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things are likely to result therefrom, including (i) expenses for cleaning, repairing and restoring the Project for re-letting; (ii) and all costs (including attorneys' fees) of repossession; and (iii) all costs of removing persons or property from the Project.

All computations of the worth at the time of award of amounts recoverable by Landlord under subparagraphs (a), (b), and (d) above shall be computed by allowing interest at a rate equal to the rate of interest most recently announced by Bank of America, N.T. & S.A., (or any successor bank) at its principal office in San Francisco as its “reference rate” serving as the basis upon which effective rates of interest are calculated for those transactions making reference thereto, but in no event in excess of the maximum rate of interest permitted under applicable law. The worth at the time of the award recoverable by Landlord under subparagraph (c) above shall be computed by discounting the amount otherwise recoverable by Landlord at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus 1%, or at such lower discount rate as may hereafter be specified by applicable California statute.

1603.3 Injunction. Upon the occurrence of an Event of Default, Landlord shall have the right to petition a court of competent jurisdiction for injunctive relief. Tenant’s failure for any reason to comply with an injunction ordered by a court shall constitute an Event of Default under this Lease.

1603.4 Right to Specific Performance. Upon the occurrence of an Event of Default, Landlord shall have the right to commence an action against Tenant for specific performance. Tenant’s failure, for any reason, to comply with specific performance ordered by a court shall constitute an Event of Default under this Lease.

1603.5 Right to Receiver. Following the occurrence of an Event of Default, if Tenant fails after receipt of a Notice of Breach to cure the default within any cure period set forth in the Notice of Breach, Landlord, at its option, may have a receiver appointed to take possession of Tenant’s interest in the Premises and Housing, Improvements with power in the receiver (i) to administer Tenant’s interest in the Project; (ii) to collect all funds available in connection with the operation of the Project; (iii) to perform all other acts consistent with Tenant’s obligations under this Lease, as the court deems proper; (iv) to apply the rents and any other sums received (less costs and expenses of operation and collection) to Rents (if any) due hereunder (and Landlord shall not be responsible to any person for the collection or non-collection of any such rents or income); (v) to take possession of the Tenant’s leasehold estate and the Project, manage and operate the Project and Tenant’s business thereon, and take possession of and use a Tenant’s books of accounts and financial records and its property managers or representatives related to the Project; and (vi) otherwise take any and all actions with respect to the Project as may be permitted under Applicable Law or this Lease.

1604 Remedies Cumulative. No remedy in this Article 16 shall be considered exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Landlord may exercise every power and remedy given by this Lease from time-to-time and as often as occasion may arise or as Landlord may deem expedient, subject to any limitations contained in this Lease.

1605 No Election of Remedies. The rights given in this Article 16 to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or non-observance thereof, or the exercise of any such right or of any other right or remedy hereunder, shall not in any way affect or impair or

toll the right or power of Landlord upon the conditions and subject to the provisions in this Lease to terminate Tenant's right of possession because of any Event of Default.

1606 Survival of Obligations. All rights of indemnification in this Lease shall survive Lease Termination. All obligations that accrue prior to Lease Termination likewise shall survive Lease Termination.

1607 No Cure After Termination. No receipt of money by Landlord from Tenant after the commencement of any suit or after final judgment for possession of the Project, shall renew, reinstate, continue or extend the right of Tenant to remain in possession of the Premises.

1608 Interest on Past Due Obligations; Late Charge. Any amount due from Tenant to Landlord hereunder which is not paid within five (5) business days after receipt of a Notice of Breach shall bear interest at the Default Rate (as defined in Section 1808.1) unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease. In addition, Tenant acknowledges that late payment by Tenant to Landlord of Base Rent or any other amount due Landlord from Tenant will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges. Further, Tenant acknowledges that Landlord intends to make commitments to third parties based on the timely payment by Tenant of sums due hereunder. Therefore, if any payment due from Tenant is not received by Landlord within thirty (30) days after receipt of a Notice of Breach, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue payment as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord.

1609 Landlord's Default. If Landlord fails to timely and properly perform any of its obligations under this Lease, and such failure continues for thirty (30) days after Landlord receives a Notice of Breach, Landlord shall be in default under this Lease ("**Landlord Default**"). If a default with due diligence cannot be cured within thirty (30) days, then there shall be a Landlord Default only if Landlord fails to commence within thirty (30) days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence. In the event of a Landlord Default, Tenant shall be entitled to any remedy it may have at law or in equity, including termination of this Lease or relief of payment of rent.

ARTICLE 17
RESERVED

ARTICLE 18

GENERAL PROVISIONS

1801 Dispute Resolution. The dispute resolution provisions set forth in this Section 1801 shall apply to all disputes between the parties relating in any way to this Lease, the Project or the Premises.

1801.1 Meet and Confer. The parties shall endeavor to resolve any disputes relating to this Lease through reasonable business like dispute resolution procedures without resort to litigation. Accordingly, if any dispute arises, either party may call a special meeting of the parties by written request specifying the nature of the matter to be addressed. The meeting shall be held at the offices of Landlord, and shall be attended by representatives of Landlord and Tenant who have authority to negotiate resolution of the dispute. The representatives shall confer in a good faith attempt to resolve the dispute until they either succeed or one or both parties concludes that the dispute will not be resolved through additional meetings.

1801.2 Mediation. If a matter in dispute is not resolved through the special meeting process, either party may initiate mediation by delivering written notice to the other. Both parties shall attend and participate in the mediation, which shall be non-binding and without prejudice to any other rights or remedies which any party may have. Unless the parties agree otherwise, the mediation proceedings shall be conducted in San Jose, California, by an independent mediator acceptable to both parties. If the parties are unable, within thirty (30) days after the notice initiating the mediation is delivered, to agree upon a mediator, then the mediator shall be chosen by the “**Selection Process**” described below. The costs of the mediation shall be shared equally by both parties to the mediation, except that each party shall pay the fees, costs and expenses of its own legal counsel and consultants in connection with the mediation. Any voluntary settlement reached as a result of the mediation process shall be reduced to writing.

1802 Selection Process. If the parties are unable to agree upon a mediator, then the party shall be selected in accordance with the following procedure. If the parties are unable to agree upon the mediator (the “**Neutral Party**”), as the case may be, within the time period designated for such agreement, then upon written request of either party, both parties shall submit in writing to the other party the names of its two candidates for Neutral Party. The two names shall be delivered to the other party within five (5) days after the date of the notice for submission of names. Each party shall, by written notice to the other party delivered within five (5) days after receipt of the two names, eliminate one of the names submitted by the other party. After the expiration of the elimination period, Landlord shall write the names remaining (one name, at least, submitted by each party) on identical papers and Landlord shall fold the papers so that the names are not visible. The names shall be placed in a receptacle and in the presence of representatives of both Landlord and Tenant, a representative of Tenant shall draw a name. The name on the paper selected shall be the Neutral Party for purposes of resolving the dispute.

1803 Estoppel Certificates.

1803.1 Tenant Estoppel Certificate. From time-to-time, within thirty (30) days after receipt of a written request by Landlord, Tenant shall deliver to Landlord a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there shall

have been modifications that the same is in full force and effect as modified and stating the modifications); (ii) the status of Tenant's contractual commitment with a developer for the Project; (iii) the dates to which the Rent and any charges have been paid; and (iv) stating whether or not, to the current actual knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge. The estoppel certificate may be relied upon by the receiving party, and any prospective lender, lessee or transferee.

1803.2 Landlord Estoppel Certificate. From time-to-time, within thirty (30) days after receipt of a written request by Tenant, Landlord shall deliver to Tenant a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications); (ii) the dates to which the Rent and any charges have been paid, (iii) stating whether or not, to the current actual knowledge of Landlord, Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Landlord may have knowledge, and (iv) such other reasonable matters as may be required by a lender or transferee. The estoppel certificate may be relied upon by the receiving party, and any prospective lender, lessee or transferee.

1804 Invalidity of Particular Provisions. If any term or provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

1805 Notices. Any notice or demand with respect to this Lease or with respect to the Premises, the Project or this Lease between Landlord and Tenant shall be in writing and shall not be effective for any purpose unless (i) personally served; (ii) delivered by delivery service; or (iii) mailed by certified or registered mail, postage prepaid, return receipt requested addressed as follows:

If to Landlord:

County of Santa Clara
70 West Hedding Street, 11th Floor
San Jose, California 95110
Attention: County Executive

with a copy to:

County of Santa Clara
70 West Hedding Street, 9th Floor
San Jose, California 95110
Attention: County Counsel

If to Tenant:

City Manager
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

with a copy to:

Office of the City Attorney
Attn: David Kahn
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

And to Leasehold Lenders as set forth in Article 14.

Notices given as described above shall be considered served:

- (a) If personally served, when delivered in accordance with the provisions of California Code of Civil Procedure for service of process on the type of entity to which the writing is addressed.
- (b) If served by delivery service, when signed for in the office of the party to whom directed.
- (c) If mailed, as required above, upon the first to occur of (i) receipt by the addressee as evidenced by a "return receipt" executed by a person in the office of addressee or (ii) on the date delivery is first attempted, as reflected by the records of the U.S. Postal Service.

Any party may change its address set forth above by notice given in the manner set forth above.

1806 Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon paying the Rent and all other charges under this Lease and observing and keeping all covenants, agreements and conditions of this Lease on its part to be observed and kept, shall have quiet enjoyment of the Premises during the term of this Lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease.

1807 Definitions. For purposes of this Lease, the following terms shall have the following meanings:

1807.1 Default Rate. "**Default Rate**" shall mean interest calculated at an annual rate equal to three percent (3%) in excess of the rate of interest most recently announced by Bank of America, NT & SA (or its successor bank) at its San Francisco office as its "reference rate" but in no event more than the maximum rate of interest permitted by law. If The Bank of America or its successor no longer issues a "reference rate," the most comparable rate of the largest bank with its corporate headquarters in New York shall be used.

1807.2 Landlord. “**Landlord**” shall mean the owner or owners at the time in question of the fee of the Premises, and in the event of any transfer or transfers of the title to such fee, Landlord herein named (and in case of any subsequent transfers or conveyances the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, provided that any funds in the hands of such Landlord at the time of such transfer, in which Tenant has an interest, shall be delivered to the transferee who shall then be obligated to hold and disburse the funds in accordance with the provisions of this Lease. The covenants and obligations contained in this Lease on the part of Landlord shall be binding upon Landlord or its successors and assigns, as the case may be, only during and in respect of their respective successive periods of ownership.

1807.3 Tenant. “**Tenant**” means the party described at the beginning of this Lease as “Tenant”.

1807.4 Unavoidable Delays. “**Unavoidable Delays**” means delays due to strikes, acts of God, inability to obtain labor, materials or utilities, governmental restrictions or moratoria except for those of Tenant, enemy action, earthquakes, civil commotion, war, failure of Landlord to comply with Lease provisions, which failure results in delay to Tenant, unavoidable casualty or similar causes beyond the reasonable control of Tenant, but financial inability of Tenant to perform shall not be an Unavoidable Delay.

1807.5 Including. “**Including**” when used in this Lease shall be construed to be accompanied with the words “without limitation” and any words following “including” shall be deemed to be illustrative only.

1808 Miscellaneous

1808.1 Construction of Language. In all cases the language in all parts of this Lease shall be construed according to its fair meaning and not strictly for or against Landlord or Tenant.

1808.2 Captions. The word titles contained herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as any part of this instrument.

1808.3 Successors and Assigns. Subject to the provisions hereof, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and wherever a reference in this Lease is made to either of the parties hereto such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such party, as if in every case so expressed.

1808.4 Memorandum of Lease. A Memorandum of Lease shall be signed by Landlord and Tenant within thirty (30) days following the Effective Date (“**Memorandum of Lease**”). The Memorandum of Lease shall be recorded in the Official Records by the Tenant. Tenant will pay all costs of recording, including any county documentary transfer tax or city conveyance tax. Tenant shall pay the cost of any title insurance it may require.

1808.5 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.

1808.6 Amendments in Writing. No amendment or modification hereof shall be effective for any purpose unless in writing signed by Landlord and Tenant.

1808.7 Attorney's Fees. Should either party hereto commence an action against the other to enforce any obligation contained herein, for equitable relief, for interpretation of the provisions of this Lease or otherwise arising under this Lease, the prevailing party shall be entitled to recover from the other party reasonable counsel fees and costs and necessary disbursements, as determined by the court having jurisdiction over the action. If Landlord elects to use its County Counsel's office to pursue any action hereunder, for purposes of determining the Landlord's attorneys' fees, the billing rates of members of the County Counsel office shall be deemed to be the same as then charged by private business litigation counsel in Santa Clara County law firms of similar size doing similar work.

1808.8 Brokers. Landlord represents that it has not engaged any broker or agent to represent Landlord in this transaction. Landlord will not pay any brokerage commission or finder's fee with regard to this Lease. Tenant represents that it has not engaged any broker or agent to represent Tenant in this transaction. Each party agrees to indemnify and hold the other harmless from and against any and all liabilities or expenses, including attorneys' fees and costs, arising out of, or in connection with claims made by any broker or individual for commissions or fees as a result of the acts of the indemnifying party.

1808.9 Indemnity Includes Defense Costs. In any case where one party is obligated under an express provision of this Lease to indemnify and to save the other party harmless from any damage or liability, the indemnity obligation shall be deemed to include defense of the indemnified party, such defense to be through legal counsel reasonably acceptable to the indemnified party.

1809 Holding Over. This Lease shall terminate without further notice upon expiration of the Term. If Tenant for any reason retains possession of the Project, or any part thereof, following Lease Termination, then Tenant shall pay to Landlord for each day of such retention for its use and occupancy of the Project or such portion thereof an amount equal to 125% of the amount of the total daily Rent in effect during the last month prior to the date of such Lease Termination. Tenant shall also indemnify and defend Landlord against and hold it harmless from any loss, liability and expense (including, but not limited to, attorneys' fees) resulting from delay by Tenant in surrendering the Project or any portion thereof, including any claims made by any succeeding tenant based on such delay. Landlord's acceptance of Rent following Lease Termination shall not constitute a renewal or extension of the Lease, and nothing contained in this section shall waive Landlord's right of re entry or any other right. Following Lease Termination, during a holdover period, Tenant shall be only a tenant at sufferance, whether or not Landlord accepts any payment from Tenant.

1810 Limitation on Liability. Landlord and Landlord's board members, employees and agents shall have no personal liability under this Lease, and Tenant shall look solely to the value of Landlord's interest in the Project for the satisfaction of any claim Tenant may have

against Landlord. The City's council members, employees and agents shall have no personal liability under this Lease. This limitation of personal liability shall be absolute and without any exception whatsoever.

1811 Non-Discrimination. That there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, operation, tenure, or enjoyment of the Project. The foregoing shall not prohibit the operation of a senior housing project.

1812 Disclaimer of Partnership. The relationship of the parties hereto is that of landlord and tenant, and it is expressly understood and agreed that Landlord does not as a result of this Lease in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise. This Lease is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or association as between Landlord and Tenant.

1813 Disclaimer of Lender/Borrower Relationship. The relationship of the parties hereto is that of landlord and tenant, and it is expressly understood and agreed that Landlord does not, as a result of this Lease, in any way nor for any purpose, become a lender to Tenant. It also is expressly understood that this Lease is not intended to, and shall not be construed to, create the relationship of lender and borrower.

1814 Entire Agreement. This Lease contains the entire agreement between the parties hereto relative to the leasing transaction covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Lease and are of no further force and effect.

1815 Landlord's Right to Enter the Premises. Landlord and its agents may enter the Premises or the Housing Improvements from time-to-time with reasonable notice (except for emergencies in which case no notice shall be required) to inspect the same, to post notices of nonresponsibility and similar notices, to show the Premises to interested parties such as prospective lenders and purchasers, to discharge Tenant's obligations pursuant to Landlord's right to do so as contained in this Lease; provided that in connection with such entry, Landlord shall use best efforts to minimize interference with Tenant.

1816 Authority to Execute Documents. By approval of this Lease, the Board of Supervisors of Santa Clara County has:

1816.1 Decision Making Authority. Granted to the County Executive or the designee of the County Executive the power and authority to make any decisions, grant any consents or provide extensions to the time periods described in this Lease. Any decision made by the County Executive or the designee of the County Executive shall be binding on the Landlord and any third party may rely on the County Executive's authority, or the authority of the designee of the County Executive, to so decide.

1816.2 Signature Authority. Granted to the County Executive, or the designee of the County Executive, the power and authority to sign on behalf of the Landlord (and bind Landlord by such signing) all documents contemplated by this Lease, including the Memorandum of Lease, any temporary or permanent easements, rights of entry, licenses, any dedications required by the City of Sunnyvale, and any consents, estoppels, Landlord waivers and any related documents.

1816.3 Asset and Economic Development Director Authority. Granted to the County Executive, or the designee of the County Executive, during the period from the time the Landlord signs this Lease until a Notice of Completion is signed and recorded with regard to the Initial Project Improvements, the power and authority to make all decisions and give all approvals (or to withhold such approvals on behalf of the County) contemplated by Article 5 of this Lease. The Landlord will be bound by any decisions, approvals or disapprovals of the County Executive or the designee of the County Executive, as described above.

1816.4 County Counsel Review. The Board of Supervisors' delegations of authority contained in Sections 1816.1 and 1816.2 are subject to review and approval by the County Counsel of all documentation as to form and legality.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease, through their officers or representatives thereunto duly authorized, as of the day and year first above written.

LANDLORD:

County of Santa Clara, a political subdivision
of the State of California

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Deputy County Counsel

TENANT:

City of Sunnyvale, a municipal corporation

By: _____

Its: _____

Date: _____

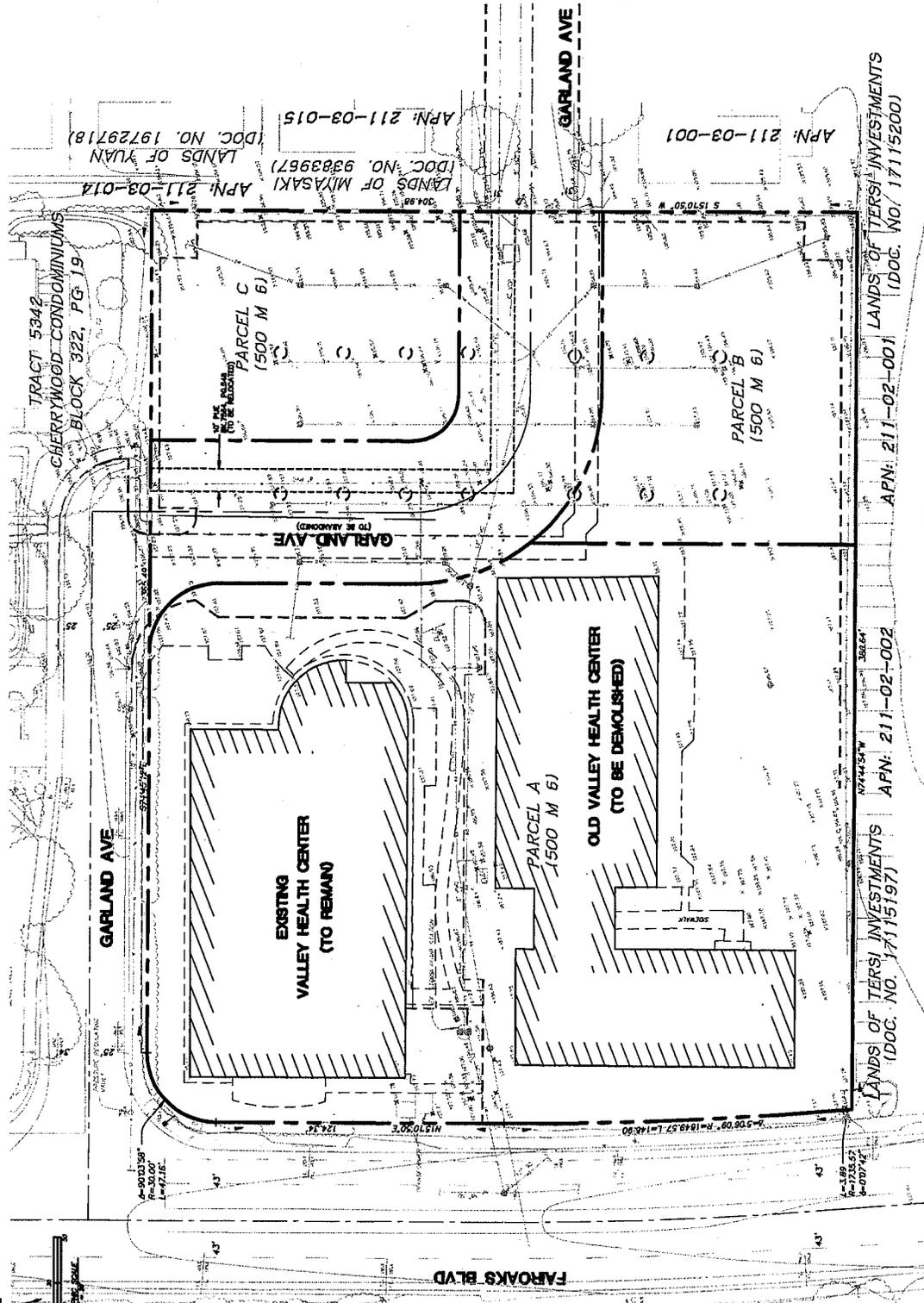
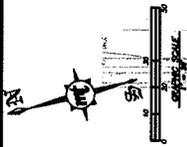
APPROVED AS TO FORM:

City Attorney

EXHIBIT A-1

EXISTING SITE LAYOUT

[attached]



MARK THOMAS & COMPANY, INC.
 Planning Consultants, Engineers, and Planning Services
 2000 S. Bascom Avenue, Suite 200
 San Jose, CA 95128
 (408) 255-3575

DATE	BY	DESCRIPTION
10/27/08	MT	AS NOTED
10/27/08	MT	AS NOTED
10/27/08	MT	AS NOTED

DATE	BY	DESCRIPTION
10/27/08	MT	AS NOTED
10/27/08	MT	AS NOTED
10/27/08	MT	AS NOTED

DATE	BY	DESCRIPTION
10/27/08	MT	AS NOTED
10/27/08	MT	AS NOTED
10/27/08	MT	AS NOTED

TOPOGRAPHY

TRACT 5342
 CHERRYWOOD CONDOMINIUMS
 BLOCK 322, PG. 19

APN: 211-03-017
 LANDS OF MIYASAKI
 (DOC. NO. 9383967)
 APN: 211-03-015
 LANDS OF YUAN
 (DOC. NO. 19729718)

APN: 211-03-001

LANDS OF TERSI INVESTMENTS
 (DOC. NO. 17115200)

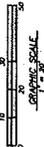
LANDS OF TERSI INVESTMENTS
 (DOC. NO. 17115197)

LANDS OF TERSI INVESTMENTS
 (DOC. NO. 17115197)

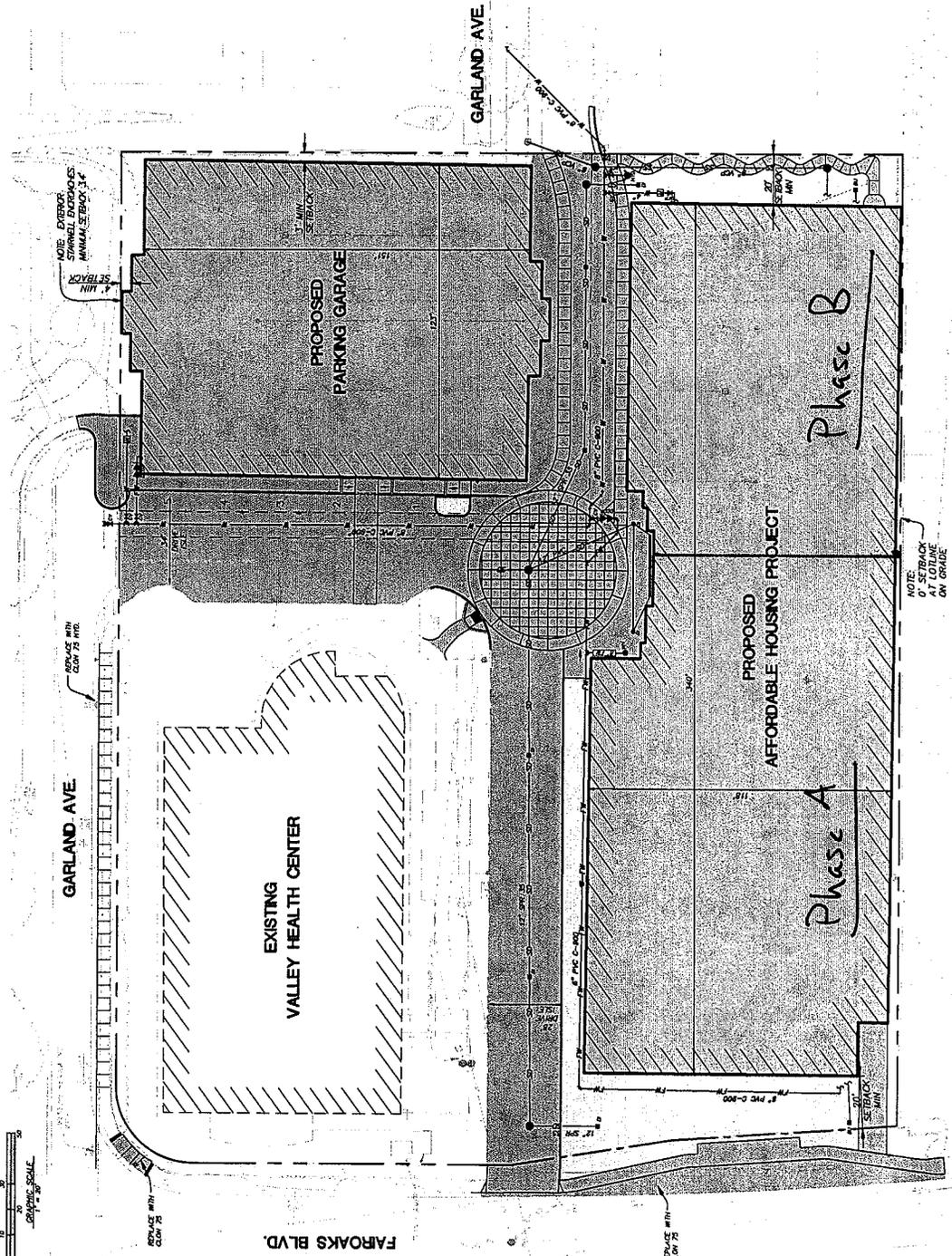
EXHIBIT A-2

**PRELIMINARY SITE PLAN
FOR INITIAL PROJECT IMPROVEMENTS**

[attached]



STANDARD SYMBOLS & LEGEND	EXISTING	PROPOSED
STORM DRAIN MAIN AND MANHOLE		
SANITARY SEWER MAIN AND MANHOLE		
SANITARY SEWER CLEAN OUT		
FIRE WATER MAIN & VALVE		
DOMESTIC WATER MAIN & VALVE		
FLAT GRADE RAIL		
CONCRETE WALK		
CURB, SIDEWALK & GUTTER		
VERTICAL CURB		
ELECTRICAL		
FIRE HYDRANT		
FIRE DETECTION CHECK		
HANDICAP RAMP		
PROPERTY LINE		
DRIVEWAY		
METER		
ROOF DRAIN		
ROOF DRAIN BUBBLE UP		
BACKFLOW PREVENTOR		
DETECTOR CHECK VALVE APPARATUS		
GATE VALVE		
BUILDING FOOTPRINT		
CONCRETE		
LANDSCAPING		
ASPHALT		



SUNNYVALE AFFORDABLE HOUSING PROJECT
TENTATIVE PARCEL MAP
 888 SOUTH FAROKHS AVENUE, SUNNYVALE, CALIFORNIA

SITE PLAN

REVISION	DATE	BY	CHK'D

DESIGNED BY: **CS**
 DRAWN BY: **MLK**
 DATE: **10/27/08**
 SCALE: **AS NOTED**
 PROJECT NO.: **156-00306**

MARK THOMAS & COMPANY, INC.
 Providing Engineering, Surveys, and Planning Services
 1862 Zanker Road
 Sunnyvale, CA 94089
 (408) 453-5373

Draft

EXHIBIT A-3

**LEGAL DESCRIPTION OF PREMISES
(PHASE B)**

[attached]

EXHIBIT "A-3"
LEGAL DESCRIPTION
FOR PHASE B

Being a portion of Parcels A and B as said Parcels are shown on that certain Parcel Map, filed for record on May 6, 1982 in Book 500 of Maps at Page 6 in the County of Santa Clara, State of California and as corrected by Certificate of Correction recorded June 10, 1992 in Book G836, Page 242, as Document No. 7386642 of Official Records, more particularly described as follows:

BEGINNING at the southeasterly corner of Parcel B of said map, thence along the southerly line of said Parcels A and B, North 74°44'54" West, 152.80 feet; thence leaving said southerly line the following two (2) courses and distances: (1) North 15°15'06" East, 105.69 feet and (2) South 74°45'16" East, 152.67 feet to a point on the easterly line of said Parcel B; thence along said easterly line, South 15°10'50" West, 105.71 feet to the **POINT OF BEGINNING**.

CONTAINING: 16,144 square feet, more or less.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Date

Larry E. Johnson

L.S. No. 4998

Expiration Date: 12-31-2009

CITY OF SUNNYVALE
 COUNTY OF SANTA CLARA
 STATE OF CALIFORNIA

GARLAND AVENUE

FAIROAKS AVENUE



PARCEL A
 (500 M 6)

PARCEL C
 (500 M 6)

S 74°45'16" E 152.67'

PHASE B
 16,143 SQ. FT.

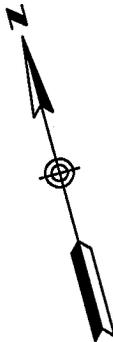
PARCEL B
 (500 M 6)

N 74°44'54" W 152.80'

N 151°06" E
 105.69'

S 151°0'50" W 105.71'

POINT OF BEGINNING



Scale 1" = 60 ft

PLAT TO ACCOMPANY DESCRIPTION OF
 PHASE B



MARK THOMAS & COMPANY, INC.
 Providing Engineering, Surveying, and Planning Services
 1980 Zanker Road
 San Jose, CA 95112
 (408) 453-8373

DESIGNED BY CCB
 CKD. BY LEJ
 DATE 10/08/08
 SCALE 1" = 60 FEET

APPROVED ON XX/XX/XX
 BY LARRY E. JOHNSON
 LS NO. 4998 12/31/09

JOB NO.
58-00608
 FILE NO.

SHEET
2 /
 OF
2

EXHIBIT B

PERMITTED TITLE EXCEPTIONS

General and special taxes and assessments, if any, for the fiscal year 2008-2009, a lien not yet due or payable.

The lien of supplement taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

EXHIBIT C

FORM OF MEMORANDUM OF LEASE

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

County of Santa Clara
Office of the County Counsel
70 West Hedding Street, 9th Floor
San Jose, CA 95110
Attention: Katherine Harasz
Deputy County Counsel

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("**Memorandum**") is made as of _____, 200_ by and between the County of Santa Clara ("**Landlord**") and the City of Sunnyvale ("**Tenant**").

1. Landlord has leased to Tenant certain improved real property described on Exhibit 1 hereto ("**Premises**"). The terms and conditions of this lease are more particularly set forth in an unrecorded Ground Lease (the "**Lease**") between Landlord and Tenant dated as of _____, which is incorporated herein by this reference thereto.

2. The term of the Lease ("**Lease Term**") is eight five (85) years, commencing thirty (30) days following receipt of building permits and other approvals required for the commencement of construction of the Housing Improvements (as defined in Section 102 of the Lease) on the Premises.

3. This Memorandum has been executed, acknowledged and recorded solely for the purpose of providing constructive notice of the Lease. If any inconsistency or conflict exists between the provisions of this Memorandum and the Lease, the terms, covenants and conditions of the Lease shall control.

IN WITNESS WHEREOF, the parties hereto have executed this memorandum as of the day and year first written above.

Tenant:

City of Sunnyvale, a municipal corporation

Approved as to Form:

By: _____

City Attorney

Its: _____

Landlord:

County of Santa Clara, a political
subdivision of the State of California

Approved as to Form and Legality:

By: _____

Deputy County Counsel

Its: _____

[SIGNATURES MUST BE ACKNOWLEDGED]

EXHIBIT 1
TO MEMORANDUM OF LEASE

[LEGAL DESCRIPTION OF PREMISES]

EXHIBIT D

ACKNOWLEDGE OF TERM COMMENCEMENT

This Acknowledge of Term Commencement is made on _____, 200_ by and between the County of Santa Clara, as Landlord, and _____, a _____, as Tenant, who agree as follows:

1. Landlord and City of Sunnyvale entered into a Ground Lease dated _____, 2008 (the "Lease"). Tenant is the assignee of the City of Sunnyvale.

2. Pursuant to Section 201 of the Lease, Landlord and Tenant agree to confirm the commencement date and expiration date of the Term of the Lease as follows:

a) _____, 20__, is the Term Commencement Date; and

b) _____, 20__, is the Expiration Date.

3. The provisions of this Confirmation of Term of Lease shall inure to the benefit of, or bind, as the case may require, the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this acknowledgement as of the day and year first written above.

Tenant:

By: _____

Its: _____

Landlord:

County of Santa Clara, a political
subdivision of the State of California

By: _____

Its: _____

Approved as to Form and Legality:

Deputy County Counsel

EXHIBIT E

IMPROVEMENT PLAN

[to be attached]

SCHEDULE 1
Glossary of Terms

This Glossary sets out certain Lease Terms and the Lease Section in which the definition is located:

<u>Terms</u>	<u>Section</u>
Additional Rent	302.1
Affordability Restrictions	1401.1
Alterations	1202
Applicable Laws	604
Casualty Proceeds	1006
Construction Contract	503.4.2
County	Recital A
County Property	Recital A
Deemed Increase	801.1.2
Default Rate	1807.1

Glossary, continued

<u>Terms</u>	<u>Section</u>
Development Plans	504.1.3
Effective Date	101
Environmental Law	603.12.2
Events of Default	1601
Expiration Date	201
Hazardous Material	603.12.1
Housing Improvements	102.1
Impositions	401
Including	1807.5
Initial Project Improvements	102.2
Insurance Trustee	1001
Landlord	Introduction
Landlord Default	1609
Landlord Indemnitees	603.4
Landlord's Retained Property	102.3
Lease	Introduction
Lease Termination	201

Glossary, continued

<u>Terms</u>	<u>Section</u>
Lease Year	302.2
Leasehold Encumbrance	1401.2
Leasehold Lender	1401.3
Lender Affiliate	1404.8
Loan	1401.4
Loan Documents	1401.5
Material Change	504.1.4
Memorandum of Lease	1808.4
Neutral Party	1802
Notice of Breach	1602.1
Notice of Completion	508
Notice of Intended Taking	1301.1.2
Notice of Late Performance	202.1(a)
Parking Garage Improvements	102.4
Partial Taking	1301.1.3
Payment Request	1002.2
Permitted Use	601
Personal Property	701.2
Premises	102.5
Project	102.6

Glossary, continued

<u>Terms</u>	<u>Section</u>
Project Loan	1401.6
Project Sub-Tenant Lease	1506
REA	102.7
Rent	301
Restructuring	1402
Site Plan	504.1.2
Substantial Taking	1301.1.4
Taking	1301.1.5
Temporary Taking	1301.1.6
Tenant	Introduction
Term	201
Term Commencement Date	201
Termination Notice	1005
Total Taking	1301.1.7
Transfer	1502
Transfer Request	1504.1

SCHEDULE 2
Milestones

[attached]

Development Milestones

Comments/Prerequisites

November, 2008	City Approves Ground Lease	
November, 2008	Housing Developer submits PD Combining District	
November, 2008	Housing Developer submits Water Line Relocation Permit	
January, 2009	City and Housing Developer to Execute DDA	To be executed within 120 days following Effective Date
January, 2009	Housing Developer to submit parking garage building plans to City for permits	
February, 2009	Water line relocation, record final map	
February, 2009	City to approve PD Combining District	
March, 2009	If temporary parking will be available in April - Housing Developer to apply for 9% tax credits	2.5 months to receive TCAC award letter; 5 months to pull housing permits
April, 2009	Temporary parking completed	
April, 2009	Begin parking garage construction	Approximately 6-7 months to construct parking garage
June, 2009	Submit Housing Plans for building permit	
October, 2009	If 9% awarded, record easement and maintenance agreement	
October, 2009	Parking garage completed	
October, 2009	If 9% credits awarded, secure permits for housing project and begin construction. Term Commencement Date (thirty days following Housing Developer's receipt of building permits and other approvals for housing project).	Approximately 18 months to complete