

**Council Meeting: June 25, 2013**

SUBJECT: Discussion and Possible Actions on Election Notice, Ground Leases, and Loan and Regulatory Agreements with MidPen Housing and Charities Housing for an Affordable Housing Project on the Armory Site, located at 620 E. Maude Avenue.

BACKGROUND

The Onizuka Air Force Station was designated by the federal government for closure in 2005. As part of the Base Realignment and Closure (BRAC) process, the City chose to form an Onizuka Local Redevelopment Authority (LRA) to prepare a local redevelopment plan and designate the preferred land uses for the property. Along with that approval, the City/LRA also adopted a Housing Assistance Submission (HAS) that recognized the need for homeless housing in the community and approved a Legally Binding Agreement (LBA) that accepted the two homeless housing claims on the Onizuka site from MidPen Housing and Charities Housing (Providers). The LBA also included the option for an Off-Site Accommodation to transfer the claims to another location, but a site was not specified at that time.

At the December 13, 2011 City Council Meeting, Council approved an Amended LBA with the Providers. The agreement recognizes the Notices of Interest that were submitted by the Providers to implement a consolidated homeless program on the Onizuka site and options for achieving the homeless program at an off-site location.

At the April 9, 2013 City Council Meeting, Council initiated the election of the Off-Site Accommodation in accordance with the Amended LBA to transfer the homeless housing program from the Onizuka site to the Armory site, and approved in form the Election Notice. The Council also approved acceptance of quitclaim deeds for the two homeless housing parcels. The deed provisions allow the "homeless purpose" use restriction to be released once the obligation is transferred to an off-site location.

At the April 30, 2013 City Council Meeting, Council approved RTC 13-100 and adopted the Mitigated Negative Declaration and Resolution to change the General Plan land use designation to Residential High Density and to introduce an ordinance to Rezone to Armory site to Residential High Density/Planned Development (R-4/PD) and approve the Special Development Permit with conditions. In addition, both the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) reviews were completed.

DISCUSSION

The LBA provides the option of an Off-site Accommodation to release and transfer the homeless housing claims by MidPen Housing and Charities Housing from the Onizuka site to the Armory site through approval of Election Notice (Attachments A). The terms and restrictions for implementing the proposed housing program on the Armory site are contained in the draft Long-Term Ground Leases (Attachments B and C) and Loan and Regulatory Agreements (Attachments D and E) between the City and each Provider.

The Long-Term Ground Leases establish the relationship between the landlord (City) and tenant (each Provider) and specifies a 90-year lease with an upfront lump sum payment of \$3.7 million from each Provider for the entire term of the lease. The Ground Leases describe the use obligation of the property, although reference is made to the more specific use provisions in the accompanying Loan and Regulatory Agreements. Lease provisions address general maintenance standards, construction and ownership of improvements, insurance and indemnification, assignment of lease and subletting, landlord remedies in the event of tenant defaults, and landlord mortgage protection.

The Loan and Regulatory Agreements constitute enforceable restrictions on the use of the property for an affordable housing project, and specifies the required number of permanent housing units (including McKinley-Vento homeless housing units as approved by the Department of Housing and Urban Development), income eligibility requirements, and maximum rents. The Agreements also contain provisions pertaining to supportive services for residents, marketing and outreach to targeted clients/residents, specific management and maintenance provisions, reporting requirements to the City, and other restrictions and conditions related to the operation of an affordable housing project. Additionally, the Agreements reinforce the land use entitlements and conditions of approval for the project.

EXISTING POLICY

Housing and Community Revitalization Sub-element, Goal A, Policy A.2: Facilitate the development of affordable housing through regulatory incentives and concessions, and/or financial assistance.

Housing and Community Revitalization Sub-element, Goal E, Policy E.6: Participate in the County Collaborative on Affordable Housing and Homeless Issues to provide a continuum of care of services and facilities for the homeless. Facilitate and sponsor the provision of housing for homeless people if the Onizuka base conversion plan is approved by the federal agencies. Support local service providers that offer facilities and support services to homeless individuals and families, and persons at risk of homelessness.

2010-2015 HUD Consolidated Plan:

Goal A: Assist in the creation, improvement, and preservation of affordable housing for lower-income and special needs households.

FISCAL IMPACT

An amount of \$8.2 million has been reserved in the City's Housing Mitigation Fund to provide financial assistance to the Providers for a potential Off-Site Accommodation in accordance with the terms of the LBA executed in 2008. If an off-site project is implemented at the Armory site, the City's General Fund would receive a lump sum payment of \$7.4 million from the Housing Mitigation Fund for a 90-year ground lease. This fund transfer would occur following release of the homeless claims on the Onizuka site and the execution of the lease and regulatory agreements for the Armory property.

PUBLIC CONTACT

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

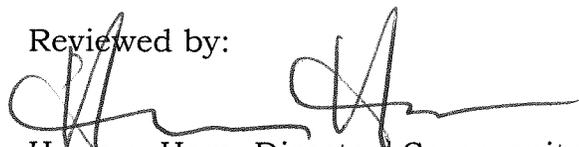
ALTERNATIVES

1. Approve the Election Notice, Long-Term Ground Leases and Loan and Regulatory Agreements in substantially the same form as provided, and authorize the City Manager to execute these documents in final form as approved by the City Attorney.
2. Approve Alternative 1 with modifications.
3. Do not approve the above alternatives and provide further direction to staff.

RECOMMENDATION

Staff recommends Alternative 1. Approval of the Election Notice, Long-Term Ground Leases and Loan and Regulatory Agreements would implement the Off-Site Accommodation option in the Legally Binding Agreement for the Onizuka site. The Armory property would be reserved for much needed affordable housing in the city, with a dedicated number of housing units to serve qualifying homeless households. The City would receive a ground lease payment of \$7.4 million upon execution of the documents and upon release of the homeless claims on the Onizuka site from the Providers.

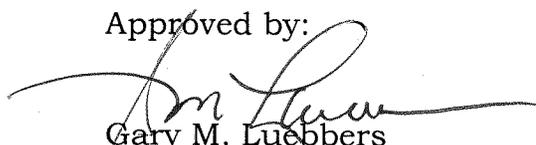
Reviewed by:



Hanson Hom, Director, Community Development

Prepared by: Ernie DeFrenchi, Affordable Housing Manager

Approved by:



Gary M. Luebbers
City Manager

Attachments

- A. Election Notice for MidPen Housing and Charities Housing
- B. Ground Lease between the City of Sunnyvale and MidPen Housing
- C. Ground Lease between the City of Sunnyvale and Charities Housing
- D. Loan and Regulatory Agreement between the City of Sunnyvale and MidPen Housing
- E. Loan and Regulatory Agreement between the City of Sunnyvale and Charities Housing

ATTACHMENT A

ELECTION NOTICE FOR MIDPEN HOUSING AND CHARITIES HOUSING

**ELECTION NOTICE
UNDER
LEGALLY BINDING AGREEMENT
AMONG
THE CITY OF SUNNYVALE, CALIFORNIA, ACTING AS
THE ONIZUKA AIR FORCE STATION LOCAL REDEVELOPMENT AUTHORITY,
MIDPEN HOUSING CORPORATION
AND
CHARITIES HOUSING DEVELOPMENT CORPORATION**

In accordance with that certain *Legally Binding Agreement Among the City of Sunnyvale, California, acting as the Onizuka Air Force Station Local Redevelopment Authority, MidPen Housing Corporation and Charities Housing Development Corporation, dated December 3, 2012* (“LBA”), the City of Sunnyvale (“City”) hereby elects to provide MidPen Housing Corporation (“MidPen”) and Charities Housing Development Corporation (“Charities”) (“Charities” and “MidPen,” collectively the “Providers”), with an Off-Site Accommodation to allow the Providers to implement the Off-Site Program at the Armory Property, in lieu of implementing the Consolidated Program at the Provider Property, as such terms are defined in the LBA.

Pursuant to the terms of Section 5.3 of the LBA, attached hereto as:

1. Exhibit A is the executed ninety (90) year ground lease between the City and MidPen in accordance with the Armory Lease Terms included as “Exhibit G” to the LBA for MidPen’s allocated portion of the Armory Property (“MidPen Armory Property Lease”);
2. Exhibit B is the executed ninety (90) year ground lease between the City and Charities in accordance with the Armory Lease Terms included as “Exhibit G” to the LBA for Charities allocated portion of the Armory Property (“Charities Armory Property Lease”);
3. Exhibit C is the loan and regulatory agreement between the City and MidPen (“MidPen Regulatory Agreement”); and
4. Exhibit D is the loan and regulatory agreement between the City and Charities (“Charities Regulatory Agreement”).

MidPen and Charities shall each execute its respective Armory Property Lease no later than December 31, 2013 or the date the City grants Land Development Approval, as such term is

defined in the LBA. Simultaneous with the execution of each Armory Property Lease, MidPen and Charities shall each release all of their rights in and to the Provider Property by executing the Provider Release attached as “Exhibit E” to the LBA.

Dated: _____

CITY OF SUNNYVALE, CALIFORNIA

By:

ATTACHMENT B

GROUND LEASE BETWEEN
THE CITY OF SUNNYVALE AND MIDPEN HOUSING

GROUND LEASE

by and between

**CITY OF SUNNYVALE
AS "LANDLORD"**

and

**MIDPEN HOUSING CORPORATION
AS "TENANT"**

CONCERNING CERTAIN REAL PROPERTY LOCATED IN THE
CITY OF SUNNYVALE, CALIFORNIA

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. PROPERTY AND BACKGROUND	1
1.01. Overview	1
1.02. Property	1
1.03. Lease	1
ARTICLE 2. TERM.....	1
2.01. Term	1
2.02. Commencement	1
ARTICLE 3. RENT	1
3.01. Lump Sum Payment.....	1
ARTICLE 4. TAXES AND ASSESSMENTS	2
4.01. Personal Property Taxes	2
4.02. Real Property Taxes	2
4.03. New Assessments	2
4.04. Tenant's Tax Liability Prorated	2
4.05. Permitted Contests	3
ARTICLE 5. USE, CHARACTER, OPERATION AND MAINTENANCE OF IMPROVEMENTS	3
5.01. General	3
5.02. Use Obligations	3
5.03. Use Prohibitions	4
5.04. General Standards of Maintenance	5
5.05. Governmental Requirements	6
ARTICLE 6. CONSTRUCTION AND LIENS.....	6
6.01. Initial Construction of Improvements	6
6.02. Construction Standards	7
6.03. Additional Construction on Property	8
6.04. Protection of Landlord	9
6.05. Notice	10
ARTICLE 7. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY	10
7.01. Ownership of Improvements During Term	10
7.02. Landlord's Right on Default by Tenant	10
7.03. Removal and Ownership at Termination	10
ARTICLE 8. UTILITIES	11

	<u>Page</u>
ARTICLE 9. INSURANCE AND INDEMNITY	11
9.01. Indemnity	11
9.02. Insurance	11
9.03. Review	12
9.04. Proof of Coverage	12
ARTICLE 10. DAMAGE OR DESTRUCTION.....	12
10.01. Restoration	12
10.02. Right to Terminate Upon Destruction During Final Years of Lease Term	13
10.03. Waiver	13
10.04. Determination of Extent of Destruction; Interference with Use	13
10.05. Procedures for Repair and Restoration	13
10.06. Right to Terminate Upon Destruction By Uninsured Casualty or Where Insufficient Insurance Proceeds.....	14
10.07. Procedures for Certain Permitted Terminations	14
ARTICLE 11. CONDEMNATION	15
11.01. Definitions	15
11.02. Parties' Rights and Obligations to be Governed by Lease	16
11.03. Total Taking	16
11.04. Effect of Partial Taking	16
11.05. Restoration of the Property	16
11.06. Waiver of CCP Section 1265.130	16
11.07. Award	16
ARTICLE 12. ASSIGNMENT AND SUBLETTING.....	17
ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES	17
13.01. Defaults by Tenant	17
13.02. Landlord's Remedies	18
13.03. Default Not Susceptible to Cure Within Prescribed Period	19
13.04. Damages	19
13.05. Landlord's Right to Cure Tenant's Default	20
ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS.....	20
14.01. Leasehold Mortgage Authorized	20
14.02. Notice to Landlord	20
14.03. Definitions	20
14.04. Consent of Leasehold Mortgagee Required	21
14.05. Default Notice	21
14.06. Notice to Leasehold Mortgagee	21
14.07. Mortgagee to Foreclose	22
14.08. Purchase and Sale	22
14.09. Purchaser's/Assignee's Right to Sell	22
14.10. New Lease	23
14.11. No Merger	23
14.12. Landlord Bankruptcy	24

Page

ARTICLE 15. MISCELLANEOUS	24
15.01. Holding Over	24
15.02. Attorneys' Fees	24
15.03. Quiet Possession	24
15.04. Force Majeure	24
15.05. Notices	25
15.06. Waiver	25
15.07. Surrender	25
15.08. Binding	25
15.09. Landlord's Right to Enter Property	25
15.10. Disclaimer of Partnership	26
15.11. Memorandum	26
15.12. Quitclaim	26
15.13. Interpretation	26
15.14. Covenants and Conditions	26
15.15. Integration	26
15.16. Estoppel Certificate	26
15.17. Landlord's Right to Sell	27
15.18. Environmental Contamination	27

EXHIBITS

Exhibit A	Description of the Property
Exhibit B	Form of Memorandum of Lease
Exhibit C	Scope of Development
Exhibit D	Schedule of Performance

GROUND LEASE

THIS GROUND LEASE (the "Lease") is made and entered into as of _____, 2013, by and between the CITY OF SUNNYVALE, a California municipal corporation (hereinafter called "Landlord"), and MIDPEN HOUSING CORPORATION, a California nonprofit public benefit corporation (hereinafter called "Tenant"), who agree as follows:

ARTICLE 1. PROPERTY AND BACKGROUND

1.01. Overview. The purpose of this Lease is to effectuate the Development Plans for the former National Guard Armory site owned by the City of Sunnyvale and located at 620 E. Maude Avenue for the construction, development and operation thereon of 58 units of affordable rental housing that will be made available to persons and families of very low and low income to the extent provided for in this Lease. The Armory Project is the off-site accommodation given by the City Council, acting as the Onizuka Air Force Base Local Redevelopment Authority, in lieu of implementing a consolidated housing program at the Onizuka Air Force Station.

Landlord, and Tenant, as one of the joint venture Developers of the Armory Project along with Charities Housing (collectively referred to as the "Housing Providers"), have previously agreed to initial terms for the lease, development, construction and operation of the Armory Project.

1.02. Property. Landlord owns the real property located in the City of Sunnyvale, Santa Clara County, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein, and which is hereinafter called the "Property."

1.03. Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Property, for the term and upon the covenants and conditions set forth herein.

ARTICLE 2. TERM

2.01. Term. Unless terminated earlier in accordance with the provisions of this Lease, the term of this Lease shall be for a period of ninety (90) years. The term shall expire at 11:59 p.m. on the day immediately preceding the ninetieth (90th) anniversary of the Commencement Date (as defined in Section 2.02.).

2.02. Commencement. The term of this Lease shall commence upon the date of execution by all parties. A "Lease Year" shall be the one-year period from the Commencement Date or anniversary thereof to 11:59 p.m. on the day immediately preceding the anniversary of the Commencement Date or an anniversary thereof.

Notwithstanding any other provision of this Lease to the contrary, the parties agree that transfer of possession and exclusive use of the Property shall not occur until April 15, 2014. Immediately upon the transfer of possession to the Tenant, the parties shall record a memorandum of this Lease in the office of the County Recorder of Santa Clara County pursuant to Section 15.11 of this Lease.

ARTICLE 3. RENT

3.01 Lump Sum Payment. On January 1, 2014, Tenant shall pay Landlord one lump sum payment of \$3.7 million for the entire term of the lease.

ARTICLE 4. TAXES AND ASSESSMENTS

4.01. Personal Property Taxes. Tenant shall pay before delinquency all taxes, assessments, license fees and other charges ("taxes") that are levied and assessed against Tenant's personal property installed or located in or on the Property which become payable during the term. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

4.02. Real Property Taxes. Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. To the extent permitted by law, Landlord will cooperate as necessary to allow Tenant to pursue any applicable property tax exemption. Tenant shall pay all real property taxes and general and special taxes ("real property taxes") levied and assessed against the Property and all real property taxes levied against Tenant's improvements in the Property; provided that Tenant may seek and obtain a "welfare exemption" or other applicable exemptions from the payment of such assessments. Each year Landlord shall notify Tenant of the real property taxes, and immediately on receipt of the tax bill, shall furnish Tenant with a copy of the tax bill. Tenant shall, semi-annually, pay the real property taxes not later than the taxing authority's delinquency date. If at any time during the term of this Lease any authority having the power to tax, including, without limitation, any federal, state, county or city government or any political subdivision thereof (collectively, "taxing authority"), shall alter the methods and/or standards of taxation and assessment against the legal or equitable interests of Landlord in the Property or the improvements located or constructed thereon, in whole or in part, so as to impose a monetary obligation on Landlord in lieu of or in addition to the taxes and assessments in existence as of the date of this Lease, such taxes or assessments based thereon, including, without limitation, (a) a tax, assessment, excise, surcharge, fee, levy, penalty, bond or similar imposition (collectively, "impositions"), on Landlord's right to rental or other income from the Property or as against Landlord's leasing of the Property, (b) any impositions in substitution or in lieu, partially or totally, of any impositions assessed upon real property prior to any such alteration, (c) any impositions allocable to or measured by the area of the Property or the rental payable hereunder, including, without limitation, any impositions levied by any taxing authority with respect to the receipt of such rental or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant or any subtenant of the Property or any portion thereof, (d) any impositions upon this lease transaction or any document to which Tenant is a party which creates or transfers any interest or estate in or to the Property (other than any transfer tax which may be due upon recordation of the Memorandum of Lease described in Section 15.11), or (e) any special, unforeseen or extraordinary impositions which, although not specifically described above, can fairly be characterized as a real property tax or a substitute for real property tax, shall be considered as "real property taxes" for the purposes of this Lease. "Real property taxes" shall exclude, however, all general income taxes, gift taxes, inheritance taxes and estate taxes owed by Landlord.

4.03. New Assessments. If any general or special assessment is levied against the Property, Landlord shall elect to pay such assessments in installments, rather than in full, and Tenant shall promptly pay the installments when due.

4.04. Tenant's Tax Liability Prorated. Tenant's liability to pay real property taxes and new assessments shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the lease term at its inception and expiration or earlier termination in accordance with this Lease.

4.05. Permitted Contests. Tenant, at its cost, shall have the right at any time to seek a reduction in the assessed valuation of the Property or to contest any real property taxes that are to be paid by Tenant. If Tenant seeks a reduction or contests the real property taxes, the failure on Tenant's part to pay the real property taxes shall not constitute a default as long as Tenant complies with the provisions of this paragraph.

Landlord shall not be required to join in any proceeding or contest brought by Tenant unless the provisions of any law require that the proceeding or contest be brought by or in the name of Landlord or any owner of the Property. In that case Landlord shall join in the proceeding or contest or permit it to be brought in Landlord's name as long as Landlord is not required to bear any cost. Tenant, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered, together with all costs, charges, interest and penalties incidental to the decision or judgment. If Tenant does not pay the real property taxes when due and Tenant seeks a reduction or contests them as provided in this paragraph, before the commencement of the proceeding or contest Tenant shall furnish to Landlord a surety bond issued by an insurance company qualified to do business in California. The amount of the bond shall equal one hundred percent (100%) of the total amount of real property taxes in dispute. The bond shall hold Landlord and the Property harmless from any damage arising out of the proceeding or contest and shall insure the payment of any judgment that may be rendered.

ARTICLE 5. USE, CHARACTER, OPERATION AND MAINTENANCE OF IMPROVEMENTS

5.01. General. Tenant shall use the Property and the improvements thereon only for the Armory Project as specified herein in accordance with all applicable laws, regulations, and Armory Project approvals. For the entire ninety (90) year lease term, Tenant shall use the Property and the improvements thereon for no other purpose without the prior written consent of Landlord.

5.02. Use Obligations.

a. Affordable Housing Covenants.

Tenant acknowledges that, with the exception of one (1) unrestricted two-bedroom manager's unit, all of the fifty-eight (58) apartments developed on the Property shall be income-restricted to the extent and for the duration required in the City of Sunnyvale Housing Mitigation Fund Loan and Regulatory Agreement and Declaration of Restrictive Covenants and the City of Sunnyvale HOME Regulatory Agreement to be entered into by Tenant ("Regulatory Agreements").

b. Nondiscrimination and Nonsegregation.

Tenant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

Tenant shall refrain from restricting the rental, sale or lease of the Property on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(2) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased."

(3) In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

5.03. Use Prohibitions. Tenant agrees that in connection with the use and operation of the Property it will not:

a. Use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the improvements in such manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the improvements or common areas (provided, however, that nothing herein shall be deemed to prohibit the installation and use of a public address system for security purposes), and will keep all mechanical apparatus free of

vibration and noise which may be transmitted beyond the interior of the improvements or common areas; or

b. Cause or permit obnoxious odors to emanate or be dispelled from the improvements; or

c. Permit undue accumulations of garbage, trash, rubbish or any other refuse; or

d. Create, cause, maintain or permit any nuisance in, on or about the Property; or

e. Commit or suffer to be committed any waste in, on or about the Property; or

f. Use or allow the Property to be used for any improper, immoral or unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Property; or

g. Do or permit to be done anything which in any way unreasonably disturbs the occupants of neighboring property; or

h. Cause or permit any insurance coverage on the Property or the improvements thereon to become void or voidable or make it impossible to obtain any required insurance at commercially feasible rates; or

i. Cause or permit any structural damage to the Property or the improvements thereon or to any adjacent public or private property, subject to acts of nature; or

j. Violate any law, ordinance or regulation applicable to the Property and the improvements thereon.

5.04. General Standards of Maintenance. Upon transfer of possession of the Property to Tenant and for the remaining duration of the Agreement term, Tenant shall be responsible for all maintenance of the Property. Tenant shall be fully responsible for the operation and maintenance of all of Tenant's improvements on the Property, and any open space and common areas on the Property, and shall operate and maintain, or cause to be operated and maintained, such improvements and open space and common areas in good order, condition and repair subject only to normal wear and tear customary for affordable housing projects

Without limiting the generality of the foregoing, Tenant shall observe the following standards:

a. Maintain the surface of all pedestrian areas level, smooth and evenly covered with the type of surfacing material originally installed thereon or such substitute thereof as shall be in all respects equal thereto or better in quality, appearance and durability;

b. Remove all papers, debris, filth and refuse, and sweep, wash down and/or clean all hard surfaces, including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members as required;

c. Maintain such appropriate entrance, exit and directional signs, markers and lights as shall be reasonably required and which are in accordance with the practices prevailing in the operation of similar developments;

- d. Clean lighting fixtures and relamp and/or reballast as needed;
- e. Repaint striping, markers, directional signs, etc., as necessary to maintain in good condition;
- f. Maintain landscaping as necessary to keep in a thriving condition;
- g. Maintain signs, including relamping and/or reballasting and/or repairing as required;
- h. Maintain and keep in good condition and repair all benches, shelters, planters, mall coverings, banners, furniture, trash containers, sculptures and other exterior elements;
- i. Maintain and keep in a sanitary condition public restrooms and other common-use facilities;
- j. Clean, repair and maintain all common utility systems to the extent that the same are not cleaned, repaired and maintained by public utilities;
- k. Maintain all buildings and parking structures as well as open space common areas;
- l. Provide adequate security lighting in all areas during periods of unrestricted public access, and maintain all security and decorative light fixtures and associated wiring systems;
- m. Maintain all surface and storm lateral drainage systems; and
- n. Maintain all sanitary sewer lateral connections.

5.05. Governmental Requirements. Tenant shall at all times comply with, and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with, any and all laws, statutes, ordinances, rules and regulations ("laws") which apply to the operation and use of the Property, including those requiring alterations or additions to be made to, or safety appliances and devices to be maintained or installed in, on or about the Property under any laws now or hereafter adopted, enacted or made and applicable to the Property, and payment of any fees, charges or assessments arising out of or in any way related to the Property as a source of adverse environmental impacts or effects.

ARTICLE 6. CONSTRUCTION AND LIENS

6.01. Initial Construction of Improvements

a. Construction. Within the time and in the manner set forth in this Lease and, in particular, the Scope of Development (Exhibit D) and the Schedule of Performance (Exhibit E), Tenant shall construct or cause to be constructed the improvements required to be constructed on the Property in full conformity with the construction plans, drawings, planning permits, conditions of approval and related documents approved by the Landlord for Zoning and Design Review Approval ("Land Development Approval"). Such improvements are referred to herein as the "Initial Construction."

b. Completion. Tenant shall take all steps necessary to enable it to commence, and will commence, the Initial Construction, and will diligently prosecute and complete such Initial Construction within the times set forth in the Schedule of Performance.

6.02. Construction Standards.

a. General Construction Standards. All demolition, construction, alteration or repair work permitted herein (including the Initial Construction) shall be accomplished expeditiously and diligently and must comply with all applicable codes. Tenant shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. Tenant shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated therewith and shall indemnify and hold Landlord harmless from all damages, losses or claims attributable to the performance of such work. Dust, noise and other effects of such work shall be controlled using the best accepted methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area.

b. Utility Work. Any work performed by or on behalf of Tenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to occupants and other persons.

c. Use of Plans. The contracts with any architect, other design professional or any general contractor shall provide, in form and substance reasonably satisfactory to Landlord, for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder, and Landlord shall be furnished with any such agreement, together with the further agreement of the parties thereto, that if this Lease is terminated due to Tenant's default, Landlord may use any plans and specifications to which Tenant is then entitled pursuant to any such contract without payment of any further sums to any party thereto.

d. Compliance with Construction Documents and Laws; Issuance of Permits. All improvements on the Property shall be constructed in compliance with any construction documents approved by Landlord and also in compliance with all applicable local, state and federal laws and regulations. Tenant shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction.

e. Construction Safeguards. Tenant shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by Tenant, all necessary safeguards for the protection of workers and the public.

f. Conditions to Commencement of Construction. In no event shall Tenant commence any construction on the Property until the following conditions have been satisfied or otherwise expressly waived by Landlord, in addition to other conditions and requirements imposed by this Lease:

(1) Landlord has approved Tenant's final plans and specifications for the improvements;

(2) Tenant has obtained binding commitments for financing and equity capital necessary for the full payment of construction of the improvements, together with any required operating capital;

(3) Tenant has obtained building permits and all other governmental approvals necessary for the construction of the improvements;

(4) Tenant has entered into complete and binding contracts with its contractor or contractors for the construction of the improvements; and

(5) Tenant and/or its general contractor has obtained labor and material payment and performance bonds in an amount not less than the cost of construction of the improvements, which bonds shall name Landlord as a co-obligee.

g. 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 Property is required by law.

Tenant and Landlord each recognize that in order to provide for the orderly development of the Property and the overall management and operation of the improvements, it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easements and dedications, and similar rights be granted or dedicated over or within portions of the Property. Landlord agrees that it will, upon request of Tenant, join with Tenant in executing and delivering such documents, from time-to-time, and throughout the term of this Lease as may be appropriate, necessary or required by governmental agencies and public utility companies for the purpose of granting such easements and dedications. All costs and expenses incurred by Landlord in connection therewith shall be reimbursed to Landlord by Tenant promptly upon written demand therefor by Landlord.

h. Rights of Access. Representatives of Landlord shall have the right of reasonable access to the Property and the improvements thereon without charges or fees, and at normal construction hours during the period of construction, for the purposes of ascertaining compliance with the terms of this Lease, including, but not limited to, the inspection of the construction work being performed. Landlord's access shall be reasonably calculated to minimize interference with Tenant's construction and/or operations.

i. Notice of Completion. Upon completion of any construction, Tenant shall file or cause to be filed in the Official Records of the County of Santa Clara a Notice of Completion (the "Notice of Completion") with respect to the improvements, and Tenant shall deliver to Landlord, at no cost to Landlord, two (2) sets of final as-built plans and specifications of the improvements.

6.03. Additional Construction on Property.

a. Construction Standards. Any additional building erected on any portion of the Property as permitted under this Lease, any remodeling or reconstruction work undertaken on or within any existing building on any portion of the Property, and any alteration of or addition to open spaces or common area, shall at all times be substantially in accordance with plans therefor submitted to and approved by Landlord in accordance with subsection b. of this Section 6.03. Any such development or construction of additional buildings, remodeling or reconstruction of any building on any portion of the Property, or alteration of or addition to open

spaces or common area, shall at all times meet in all material respects the requirements of the Scope of Development and shall conform in all material respects to the approved design concepts, so that the exterior of all such buildings, including, without limitation, exterior elevations and color thereof, and all such other improvements, will be architecturally and aesthetically compatible and harmonious with the other buildings and improvements on the Property to create a uniform general plan for the Property. All construction shall be diligently prosecuted and accomplished without cost or expense to Landlord, and in a good and workmanlike manner.

b. Landlord's Approval of Plans. Landlord shall have rights of approval with respect to any construction, reconstruction or remodeling work undertaken prior to Landlord's issuance of the Certification of Completion for the Property. Following completion of the Initial Construction and issuance of said Certificate of Completion, any construction, reconstruction or remodeling undertaken by Tenant on the Property shall be governed by the following:

(1) Tenant shall have the right, without Landlord's consent (but subject to all other provisions of this Lease), to undertake any interior, nonstructural remodeling of the Tenant's improvements not visible from the outside or affecting exterior appearance and not altering the pre-existing location of the improvements on the Property;

(2) If Tenant at any time desires to undertake any construction, reconstruction, demolition or remodeling on the Property which is not exempt from Landlord's approval as provided in subsection 6.03.b.(1), above, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review and written approval, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably necessary for Landlord to make an informed decision on such submission. Landlord shall approve or disapprove such submitted plans within thirty (30) days of receipt of complete plans and specifications meeting the requirements of this subsection. Failure of the Landlord to specify any objection to such plans and specifications or make a proposal that would add to or change the plans and specifications within such 30-day period shall be deemed to be an approval. The plans and specifications shall comply with this Lease and shall be in compliance with existing building codes and other laws, regulations and ordinances; and

(3) No material changes to the approved plans and specifications shall be made without the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed.

6.04. Protection of Landlord. Nothing in this Lease shall be construed as constituting the consent of Landlord, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Tenant or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in such manner as would give rise to the filing of mechanics' liens or other claims against the fee of the Property or the improvements thereon. Landlord shall have the right at all reasonable times to post, and keep posted, on the Property any notices which Landlord may deem necessary for the protection of Landlord and of the Property and the 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 Property 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 Property and the improvements thereon, subject to Tenant's right to contest same.

Tenant shall keep the Property and such improvements free and clear of all 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, reasonable attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it.

In the event any lien is recorded and not expunged within sixty (60) days of recording, Tenant shall, upon demand, furnish the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Property.

6.05. Notice. Should any claims of lien be filed against the Property or the improvements thereon, or any action affecting the title to such Property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

ARTICLE 7. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY

7.01. Ownership of Improvements During Term. All improvements constructed on the Property by Tenant as permitted or required by this Lease shall, during the term of this Lease, be and remain the property of Tenant; provided, however, that Tenant's rights and powers with respect to the improvements are subject to the terms and limitations of this Lease and Tenant's interest in such improvements shall terminate upon the expiration or sooner termination of this Lease. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

7.02. Landlord's Right on Default by Tenant. In the event of any default on the part of Tenant in performing the terms and provisions of this Lease entitling Landlord to possession of the Property and after the expiration of any applicable cure period, Landlord shall have the immediate right of possession of all personal property and the right to assume any ownership or leasehold interest of Tenant in any financed or leased personal property, subject to the rights of third-party lenders and equipment lessors.

7.03. Removal and Ownership at Termination. At the expiration or sooner termination of the term of this Lease, Landlord may, at Landlord's election, require the removal from the Property, at Tenant's sole cost and expense, of all personal property (other than fixtures), or of certain personal property (other than fixtures), as specified in the notice provided for below. A request to take effect at the normal expiration of the term shall be effected by notice given at least one hundred twenty (120) days before the expiration date. A demand to take effect on any other termination of this lease term shall be effectuated by notice given concurrently with notice of such termination or within ten (10) days after such termination. Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of personal property which Tenant has failed to remove after demand pursuant to this Section.

Tenant may remove any personal property from time to time, during the term of this Lease, and within forty-five (45) days of the expiration of the term of this Lease, that may be removed without damage to the structural integrity of the Property and the improvements thereon. Tenant shall repair all damage caused by any such removal.

Any personal property not removed by Tenant within forty-five (45) days following expiration of the term shall be deemed to be abandoned by Tenant and shall, without

compensation to Tenant, then become the Landlord's property, free and clear of all claims to or against it by Tenant or any other person.

ARTICLE 8. UTILITIES

Tenant shall pay when due and shall hold Landlord harmless from any liability for all charges for water, gas, sewage, electricity, telephone and other utility service supplied to the Property.

ARTICLE 9. INSURANCE AND INDEMNITY

9.01. Indemnity. Tenant agrees to protect and does hereby indemnify and hold Landlord harmless from all demands, claims, actions and damages to any person or property (including reasonable attorneys' fees) arising out of or connected with the use or occupancy of the Property by Tenant other than those attributable to the negligence or willful misconduct of Landlord.

9.02. Insurance.

a. General. Without limiting the Tenant's indemnification of the Landlord, the Tenant shall provide and maintain at its own expense during the term of this Lease the following programs of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to the Landlord (as determined by the Landlord's Risk Manager) and evidence of such programs satisfactory to the Landlord shall be delivered to the Landlord on or before the Commencement Date of this Lease. Such evidence shall specifically identify this Lease and shall contain express conditions that the Landlord is to be given written notice at least thirty (30) days in advance of any modification or termination of any program of insurance.

b. During Construction. During the period of construction, the Tenant shall provide or cause its contractors or subcontractors to furnish the following forms and amounts of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

(1) Builders All-Risk Insurance covering the entire work against loss or damage until completion and acceptance by the Landlord. Such insurance shall be in an amount equal to the replacement value of the subject improvements and endorsed for broad form property damage, breach of warranty, and explosions, collapse and underground hazards. Reasonable deductibles will be allowed.

(2) Comprehensive General Liability Insurance endorsed for premises-operations, products/completed operations and contractual liability, in the amount of One Million Dollars (\$1,000,000) primary and Four Million Dollars (\$4,000,000) excess coverage.

(3) Comprehensive Auto Liability Insurance endorsed for all owned and non-owned vehicles with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence.

(4) Worker's Compensation Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California and which specifically covers all persons providing services on behalf of Tenant and all risks to such persons under this Lease.

c. Following Completion of Construction. During the term of this Lease, following the issuance of a Certificate of Completion for the Initial Construction, Tenant shall provide the following forms and amounts of insurance with respect to the Property. Such insurance shall be primary to and not contributing with any other insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

(1) Fire and Extended Coverage Insurance in All-Risk form, with vandalism and malicious mischief endorsements and an earthquake endorsement (if obtainable at commercially reasonable rates) covering all improvements against loss or damage in an amount equal to not less than 100% of the replacement cost, with such deductible as shall be reasonable in comparison with similar properties. Landlord shall be made an additional insured on any policy of insurance required by any permanent or construction lender.

(2) Rental Income Protection Insurance covering loss due to the above perils, with a period of indemnity not less than six (6) months.

(3) Comprehensive General Liability Insurance endorsed for premises-operation, products/completed operations, contractual and broad form property damage with a combined single limit of not less than One Million Dollars (\$1,000,000) primary and Four Million Dollars (\$4,000,000) excess coverage per occurrence.

9.03. Review. The liability insurance requirements may be reviewed by Landlord and Tenant every five (5) years for the purpose of mutually increasing (in consultation with their respective insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards. If the parties are unable to mutually agree upon such new limits within thirty (30) days of a written demand by one party upon the other, the determination of an independent insurance advisor selected by the parties' insurance advisors shall be binding upon the parties.

9.04. Proof of Coverage. All policies required hereunder shall be with California admitted companies having a Best's A rating (and if Best's no longer exists, an equivalent rating). Executed copies of all policies of insurance or certificates thereof shall be delivered to Landlord. All insurance policies required by this Article 9 shall name Landlord as an additional insured. As often as any such policies shall expire or terminate, renewal or additional policies shall be procured and maintained in like manner and to like extent. All policies of insurance must contain a provision that the company writing such policy will give both parties thirty (30) days advance written notice of any cancellation or lapse of the effective date or any reduction in the amounts of insurance.

Nothing in this Article 9 shall prevent Tenant from carrying insurance of the kind required of Tenant under a blanket insurance policy or policies which cover other properties owned or operated by Tenant. Tenant shall provide Landlord with certificates of insurance naming Landlord as an additional insured and setting forth the required coverage.

ARTICLE 10. DAMAGE OR DESTRUCTION

10.01. Restoration. No loss or damage by fire or any other cause resulting in either partial or total destruction of any improvements now or hereafter located on the Property, or any fixtures, equipment or machinery used or intended to be used in connection with the Property or the improvements thereon, shall (except as otherwise provided in Section 10.02 and 10.06, below) operate to terminate this Lease or to relieve or discharge Tenant from the payment of any rent, or other amounts payable hereunder, as and when they become due and payable, or from the

performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Except as otherwise provided in Sections 10.02 and 10.06, and subject to lenders' rights with respect to casualty insurance proceeds, Tenant covenants to repair or cause to be repaired and/or reconstruct or cause to be reconstructed any improvements so damaged or destroyed to the extent, condition and value of such improvements immediately prior (or if Tenant was in default of its maintenance and repair obligations at the time of such damage or destruction, to the condition and value which would have existed if Tenant had not been in default) to such damage or destruction, assuming full compliance with this Lease. Tenant's failure to make such full repair and restoration under any conditions in which it has elected or is required so to do shall constitute a default hereunder.

10.02. Right to Terminate Upon Destruction During Final Years of Lease Term. If, during the last ten (10) years of the term, the improvements on the Property are totally or partially destroyed, and if the cost of restoration exceeds ten percent (10%) of the replacement cost of the improvements on the Property immediately before the damage or destruction, Tenant may elect to terminate this Lease, provided that Tenant complies with all of the following conditions:

- a. Tenant gives Landlord written notice of the damage or destruction within ten(10) days after the event causing such damage or destruction;
- b. Tenant is not in default under any provision or condition of this Lease;
- c. Tenant gives Landlord written notice of the estimated cost of repairing or restoring such damage or destruction, together with notice of its election to terminate this Lease pursuant to this Section 10.02 within ninety (90) days of the event causing the damage or destruction; and
- d. Tenant delivers possession of the Property and improvements thereon to Landlord and quitclaims to Landlord all right, title and interest in the Property and the improvements thereon.

If Tenant so elects to terminate this Lease under this Section, then Tenant shall, at its expense, promptly remove all debris and put the Property in a safe condition. Thereupon, this Lease shall terminate and the parties shall have no further obligations to each other excepting those previously accrued but theretofore unsatisfied.

10.03. Waiver. The provisions of this Article 10 shall govern the rights of the parties in the event of any full or partial destruction of the Property. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or law with respect to any destruction of the Property or the improvements thereon.

10.04. Determination of Extent of Destruction; Interference with Use. For the purposes of Section 10.02, the extent of destruction of the improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord by the full replacement cost of the improvements, applying thereto the percentage change in construction cost for the applicable period based upon the Engineering News Record average construction cost index for such period, applicable to the San Francisco-Oakland Area, or in the absence of such index, a similar index prepared for such area.

10.05. Procedures for Repair and Restoration. In the event of any damage or destruction, Tenant shall promptly give Landlord written notice of such damage or destruction and the date on which such damage or destruction occurred. Tenant shall promptly make proof of loss and

shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided below, amounts received on account of any losses pursuant to insurance policies shall, to the extent made available by Tenant's lenders, be used and expended for the purpose of fully repairing or reconstructing the portions of the improvements on the Property which have been destroyed or damaged.

Tenant shall commence and complete or cause to be commenced and completed, in a good and workmanlike manner and in accordance with Sections 6.02 through 6.05, the reconstruction or repair of any part of the improvements on the Property damaged or destroyed, after Landlord and Tenant's lenders, to the extent applicable, have approved Tenant's plans, drawings, specifications and construction schedule for such reconstruction or repair.

10.06. Right to Terminate Upon Destruction By Uninsured Casualty or Where Insufficient Insurance Proceeds.

a. If the improvements on the Property are damaged or destroyed by any casualty where the casualty causing such damage or destruction is not required to be insured against under the terms of this Lease, then Tenant shall have the right, at its election, to (1) terminate this Lease in accordance with the provisions of Section 10.07, or (2) to make full repair of such damage and to restore the improvements in accordance with the provisions of Sections 10.01 and 10.05, or (3) repair such damage or restore the improvements to the extent necessary to preserve them and make them safe, and, in addition, to the extent of the insurance proceeds available unless Landlord has elected to terminate this Lease under subsection c. of Section 10.07 below.

b. If the improvements on the Property are damaged or destroyed by any casualty where the casualty causing such damage or destruction is required to be insured against under the terms of this Lease and Tenant is not in default of its obligation to maintain insurance against the casualty, but the insurance proceeds available are in an amount that is less than ninety percent (90%) of the amount necessary to repair and restore such improvements, then Tenant shall have the right, at its election, to (1) terminate this Lease in accordance with the provisions of Section 10.07, or (2) to make full repair of such damage and to restore the improvements in accordance with the provisions of Sections 10.01 and 10.05, or (3) repair such damage or restore the improvements to the extent necessary to preserve them and make them safe, and, in addition, to the extent of the insurance proceeds available unless Landlord has elected to terminate this Lease under subsection c. of Section 10.07 below.

10.07. Procedures For Certain Permitted Terminations and Election of Landlord to Contribute. The provisions of this Section 10.07 shall apply if the Lease may be terminated pursuant to an election of Tenant under Section 10.06..

a. Whenever damage or destruction of the improvements shall have occurred which would entitle Tenant to terminate under Section 10.06, Tenant shall immediately give Landlord written notice of such damage or destruction. Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Subject to the rights of Tenant's lenders, sums of money received as payments for any losses pursuant to said insurance policies shall be promptly paid to Landlord to be used and expended as set forth in subsection d., below.

b. Within forty-five (45) days of the date of such damage or destruction, Tenant shall notify Landlord in writing of the amount or extent of insurance proceeds available, the policies under which such proceeds are available, and the estimated cost of repairing or

restoring such damaged or destroyed improvements. Tenant shall also, if entitled to do so, notify Landlord as to whether it elects to (1) terminate; or (2) repair and restore; or (3) repair and restore to the extent of insurance proceeds available, all as provided in Section 10.06. If Tenant is not entitled so to terminate thereunder, no such notice or attempted notice shall be effective and this Lease shall continue in full force and effect and repair and restoration in full of the improvements shall be required. Tenant's determination that the extent of the damage or destruction that has occurred would entitle Tenant to terminate this Lease under Section 10.06 shall not be binding upon Landlord.

c. If Tenant notifies Landlord pursuant to the provisions of Section 10.06 that it elects not to terminate this Lease and to repair and restore only to the extent of insurance proceeds available, then Landlord may elect to terminate this Lease by written notice to Tenant of its election, given within forty-five (45) days after receipt of the notice from Tenant referred to in subsection b. above, provided, however, that any termination by Landlord pursuant to this subsection c. shall not be effective as to any leasehold mortgagee identified in Section 14.01 hereof unless consented to in writing by such leasehold mortgagee.

d. Insurance proceeds not used in repair or restoration shall be distributed as follows:

(1) First, at the option of Landlord, in any amount necessary to raze remaining improvements, clear the Property and make it safe;

(2) Second, to mortgagees (in the order of their respective lien priority), in an amount equal to the unpaid balance secured by such mortgagees, the debt service on which is then a permitted expense; and

(3) Third, to Tenant, in an amount equal to the fair market value of the improvements, subject to Landlord's reversionary interest, less the amount paid to mortgagees pursuant to (2) above; and

(4) Fourth, the balance, if any, to Landlord.

e. Upon termination of this Lease pursuant to this Section 10.07, Tenant shall deliver possession of the Property and improvements thereon to Landlord and quitclaim to Landlord all right, title and interest in the Property and the improvements thereon.

ARTICLE 11. CONDEMNATION

11.01. Definitions.

a. "Condemnation" means (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

b. "Date of taking" means the date the condemnor has the right to possession of the property being condemned.

c. "Award" means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

d. "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

11.02. Parties' Rights and Obligations to be Governed by Lease. If during the term there is any taking of all or any part of the Property, any improvements on the Property or any interest in this Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 11.

11.03. Total Taking. If the Property is totally taken by condemnation, this Lease shall terminate on the date of taking.

11.04. Effect of Partial Taking. If any portion of the Property or the improvements thereon is taken by condemnation, this Lease shall remain in effect, except that Tenant may elect to terminate this Lease if the remaining portion of the Property is rendered unsuitable (as defined herein) for Tenant's continued use. The remaining portion of the Property shall be deemed unsuitable for Tenant's continued use if, in Tenant's reasonable business judgment, Tenant determines that following a reasonable amount of reconstruction Tenant's business on the Property could not be operated at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within ninety (90) days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this paragraph will result in this Lease continuing in full force and effect.

In the event that a portion of the Property is taken by condemnation and the Tenant does not elect to terminate this Lease as set forth above, Base Rent shall continue without adjustment or abatement.

11.05. Restoration of the Property. If, in Tenant's judgment, it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use so much of the award as is necessary to restore or to add on to the Property so that the area and approximate layout of the Property will be substantially the same after the date of taking as they were before the date of taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Property, the remaining provisions of this Article 11 shall govern the rights of the parties. If Tenant fails to promptly commence the repair, restoration or reconstruction of the Property and diligently prosecute such repair, restoration or reconstruction to completion upon receipt of the award, Tenant shall be in default under this Lease.

11.06. Waiver of CCP Section 1265.130. Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Property.

11.07. Allocation of Award. Subject to the provisions of Section 11.05, the award for the Property and for the improvements shall be allocated as follows:

a. To a leasehold mortgagee authorized by this Lease in an amount equal to the amount owing on the leasehold mortgage;

b. To Landlord that portion of the award equal to the fair market value of the Property; any "bonus value" attributable to this Lease shall be paid to Landlord;

c. To Tenant, that portion of the award equal to the fair market value of the improvements constructed on the Property, subject to Landlord's reversionary interest, less the amount paid to leasehold mortgagees pursuant to subsection a. above; and

d. The balance, if any, shall be allocated between Landlord and Tenant, respectively, in that proportion in which (1) the fair market value of the Property bears to (2) the fair market value of the improvements constructed on the Property, exclusive of Landlord's reversionary interest.

ARTICLE 12. ASSIGNMENT AND SUBLETTING

Tenant may not sell or assign its interest in this Lease and may not sublet all or any portion of the Property or improvements without Landlord's written consent, except to residential tenants in accordance with this Lease and except as otherwise hereinafter provided in this Article 12. When Landlord's consent is required, it shall not be unreasonably withheld. It shall not be unreasonable for Landlord to condition its approval, among other things, upon the proposed assignee having a financial net worth, which is sufficient to meet the Tenant's obligations under this Lease, upon the proposed assignee having a reputation for and experience and qualifications in operating rental housing, and upon the proposed assignee having a reputation in the community for integrity. In evaluating the acceptability of the net worth of a proposed assignee, Landlord may require that the purchaser's or assignee's net worth be sufficient to carry out Tenant's obligations under this Lease. Landlord's consent to any one sale, assignment or sublease shall not constitute consent to any other assignment or sublease, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Article 12.

Notwithstanding the previous paragraph, Tenant shall be permitted to assign its rights and obligations under the Lease to a limited partnership in which Tenant, Mid-Peninsula The Farm, Inc., or their affiliates are the general partner without the prior consent of Landlord.

Except as expressly permitted herein, unless Landlord shall have given its prior written approval thereof, which approval shall be at the sole discretion of Landlord, Tenant represents and agrees that Tenant has not made or created, and will not make or create or suffer to be made or created, any assignment, either voluntarily or by operation of law. Notwithstanding the foregoing, Landlord's consent shall not be required in connection with an assignment to Tenant or a wholly controlled affiliate thereof, or an assignment of, or a change in, any limited partner interests in Tenant.

Any assignment made in contravention of this Article 12 shall be void and shall be deemed to be a default hereunder whether or not Tenant knew of or participated in such assignment.

No sale, assignment or other transfer of this Lease for which Landlord's consent is required shall be effective unless, at the time thereof, the entity to which such sale, assignment or transfer is made, by an instrument in writing reasonably satisfactory to Landlord and in form recordable among the land records, shall, for itself and its successors and assigns, and especially for the benefit of Landlord, expressly assume all of the obligations of Tenant under this Lease and shall agree to be subject to all conditions and restrictions to which Tenant is subject.

ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES

13.01. Defaults by Tenant. Any of the following occurrences shall constitute a default under this Lease if:

a. Tenant is not able to obtain commitments for all construction financing for the Armory Project within two (2) years after all land development approvals for the Project have been obtained, unless an express written extension is given by Landlord, provided, however, that Tenant shall be entitled to one 2-year extension of the initial two year period if Tenant is not in default under this Lease; or

b. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements herein contained or in the Regulatory Agreements, and should such other default continue for thirty (30) days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than thirty (30) days and Tenant has failed to commence such cure within such thirty (30) days and to thereafter diligently pursue completion of such cure; or

c. Tenant fails to commence, after close of the construction financing for the Project, the Initial Construction as required by this Lease for a period of three (3) months after written notice thereof from Landlord; or

d. Tenant abandons or substantially suspends the Initial Construction as required by this Lease prior to the completion thereof and issuance of a Certificate of Completion and such default shall not be cured within thirty (30) days of written notice from Landlord to Tenant; or

e. Tenant fails to complete the Initial Construction within the time set forth in Section 6.01.b., subject to force majeure, and such default shall not be cured within ninety (90) days of written notice from Landlord to Tenant; or

f. Tenant assigns (whether or not such assignment is deemed to be effective) this Lease (or any rights therein or herein), or sells, transfers, conveys, assigns or leases the whole or any part of the Property or any improvement constructed thereon in violation of this Lease; or

g. There shall be in violation of this Lease any change in control of Tenant or of a part thereof, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; provided, however, that the limited partner of Tenant may remove the general partner for uncured violations of the Tenant's partnership agreement provided that any replacement general partner shall be approved by Landlord, which approval shall not be unreasonably withheld; provided, further, that a limited partner of Tenant may assign its interest without the approval of Tenant; or

13.02. Landlord's Remedies. Subject to the rights of any leasehold mortgagees permitted under Article 14 of this Lease, upon the occurrence of any such default under Section 13.01, in addition to any and all other rights or remedies of Landlord hereunder, or by law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

a. Terminate this Lease by giving Tenant notice of termination. On the giving of the notice, all Tenant's rights in the Property and in all improvements shall terminate. Promptly after notice of termination, Tenant shall surrender and vacate the Property and all improvements in broom-clean condition; and, subject to the provisions in Section 13.02.b., below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Property and all improvements and eject all parties in possession or eject some and not others, or eject none. Termination under this paragraph shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

b. Without terminating this Lease, Landlord may at any time and from time to time relet the Property and improvements or any part or parts of them for the account and in the name of Tenant or otherwise. Landlord may at Landlord's election eject all persons or eject some and not others, or eject none; provided, however, that Landlord shall not have the right to

eject any subtenant who is not in default under a sublease whose sublease has been duly submitted and approved (if required) in writing by Landlord pursuant to 12 of this Lease and is not then in default. Any reletting may be for the remainder of the term or for a longer or shorter period. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation or occupancy of the Property or improvements, or both. Tenant hereby appoints Landlord its attorney-in-fact for the purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses, less the avails of any reletting or attornment, including (by way of example), but not limited to, remodeling expenses, commissions and advertising costs. No act by or on behalf of Landlord under this provision shall constitute a termination of the Lease, unless Landlord gives Tenant notice of termination.

c. Even though it may have relet the Property, thereafter elect to terminate this Lease and all of Tenant's rights in or to the Property.

Notwithstanding the foregoing, after Tenant has completed the Initial Construction, Landlord shall only terminate this Ground Lease for a default by Tenant under Sections 13.01(b), (f) or (g) above during the 15-year tax credit compliance period.

13.03. Default Not Susceptible to Cure Within Prescribed Period. Notwithstanding any other provisions of this Article, Landlord agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the period requiring such rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if Tenant within such period shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing and does so complete the same with the use of such diligence as aforesaid.

13.04. Damages. Should Landlord elect to terminate this Lease, Landlord shall be entitled to recover from Tenant, as damages:

a. The worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease;

b. The worth at the time of the award of the amount by which the unpaid rent that would have been earned by Landlord after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

c. The worth at the time of the award of the amount by which the unpaid rent for the balance of the lease term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

d. Any other amount (and court costs) necessary to compensate Landlord for all detriment proximately caused by Tenant's default, including, without limitation, costs of alterations and commissions in connection with reletting, but less any increased rent realized as a result of such activity.

The "worth at the time of the award," as used in subsections a. and b. of this Section, is to be computed by allowing interest at the maximum rate allowed by law. The "worth at the time of the award," as referred to in subsection c. of this Section, is to be computed by

discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

13.05. Landlord's Right to Cure Tenant's Default. Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be Additional Rent.

ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS

14.01. Leasehold Mortgage Authorized. With prior notice to Landlord, Tenant may mortgage or otherwise encumber Tenant's leasehold estate to an institutional investor (as hereinafter defined) under one or more leasehold mortgage(s) and assign this Lease as security for such mortgage(s). Any mortgage(s) shall affect only Tenant's leasehold estate and shall be subject to all of the terms and provisions of this Lease. Landlord's fee interest shall not be encumbered or subordinated to any mortgage.

14.02. Notice to Landlord. If Tenant shall mortgage Tenant's leasehold estate to an institutional investor, and if the holder of such leasehold mortgage shall provide Landlord with notice of such leasehold mortgage, together with a true copy of such leasehold mortgage, the note and all other documents relating to such leasehold mortgage, and the name and address of the mortgagee, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Article 14 shall apply with respect to such leasehold mortgage. In the event of any assignment of a leasehold mortgage or in the event of a change of address of a leasehold mortgagee or of an assignee of such mortgage, notice of the new name and address shall be provided to Landlord. Tenant shall thereafter also provide Landlord from time to time with a copy of each amendment or other modification or supplement to such instruments. All recorded documents shall be certified as true and correct copies of official records by the Santa Clara County Recorder and all non-recorded documents shall be accompanied by a certification by Tenant or the mortgagee that such documents are true and correct copies of the originals.

14.03. Definitions. As used in this Article 14:

a. The term "institutional investor" shall refer to a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance or pension fund, or public agency. The term "institutional investor" shall also include other lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of Fifty Million Dollars (\$50,000,000) at the time the leasehold mortgage loan is made.

b. The term "leasehold mortgage" shall include a mortgage, deed of trust or other security instrument by which Tenant's leasehold estate is mortgaged, conveyed, assigned or otherwise transferred to secure a debt or other obligation.

c. The term "leasehold mortgagee" or "mortgagee" shall refer to a holder of a leasehold mortgage with respect to which the notice provided for by Section 14.02 has been given and received and as to which the provisions of this Article 14 are applicable.

14.04. Consent of Leasehold Mortgagee Required. Notwithstanding anything to the contrary contained in this Lease, no cancellation, surrender, amendment, modification or termination (other than a termination due to a breach or default) of this Lease shall be effective as to any leasehold mortgagee unless consented to in writing by such leasehold mortgagee.

14.05. Default Notice. Landlord, upon providing Tenant any notice of default under this Lease, shall at the same time provide a copy of such notice to the leasehold mortgagee and to Tenant's investor limited partner, if Tenant's investor limited partner has requested a copy of such notices and has provided Landlord with an address for service thereof. Notice by Landlord to Tenant shall be deemed to have been duly given even in the absence of notice to the mortgagee and investor limited partner; provided, however, that the time periods with respect to such mortgagee and investor limited partner shall not commence until notice is given to such mortgagee or investor limited partner. From and after such notice has been given to the leasehold mortgagee or investor limited partner, such leasehold mortgagee or investor limited partner shall have the same period, after the giving of such notice upon it, for remedying any default (or acts or omissions which are the subject matter of such notice) or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in Sections 14.06 and 14.07 to remedy, commence remedying or cause to be remedied the defaults (or acts or omissions which are the subject matter of such notice) specified in any such notice. Landlord shall accept such performance by or at the instigation of such leasehold mortgagee or investor limited partner as if the same had been done by Tenant. Tenant authorizes the leasehold mortgagee or investor limited partner to take any such action at such leasehold mortgagee's or investor limited partner's option and does hereby authorize entry upon the Property by the leasehold mortgagee or investor limited partner for such purpose.

14.06. Notice to Leasehold Mortgagee. If any default shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such default (or the act or omission which gave rise to such default), Landlord shall notify the leasehold mortgagee of Landlord's intent to so terminate at least sixty (60) days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least one hundred twenty (120) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions of Section 14.07 below shall apply if, during such 60-day or 120-day termination notice period, the leasehold mortgagee shall:

a. Notify Landlord of such leasehold mortgagee's desire to nullify such notice; and

b. Pay or cause to be paid all Base Rent, Additional Rent and other payments then due and in arrears as specified in the termination notice to such leasehold mortgagee and which may become due during such 60-day or 120-day period; and

c. Comply, or in good faith, with diligence and continuity, commence to comply, with all nonmonetary requirements of this Lease then in default and reasonably susceptible of being complied with by such leasehold mortgagee; provided, however, that in the event such leasehold mortgagee shall commence foreclosure proceedings within such 120-day period, such leasehold mortgagee shall not be required during such 120-day period to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property junior in priority to the lien of the mortgage held by such leasehold mortgagee.

Any notice to be given by Landlord to a leasehold mortgagee pursuant to any provision of this Article 14 shall be deemed properly addressed if sent to the leasehold mortgagee who served the notice referred to in Section 14.02 at the address stated in such notice unless notice of a change of mortgage ownership has been given to Landlord pursuant to Section 14.02.

14.07. Mortgagee to Foreclose. If Landlord shall elect to terminate this Lease by reason of any default of Tenant and the leasehold mortgagee shall have proceeded in the manner provided for by Section 14.06, the specified date for the termination of this Lease, as fixed by Landlord in its termination notice, shall be extended for a period of six (6) months, provided that such leasehold mortgagee shall, during such 6-month period:

a. Pay, or cause to be paid, the Base Rent, Additional Rent and any other monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease; and

b. If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the leasehold mortgage or other appropriate means and prosecute the same to completion with due diligence.

If at the end of such 6-month period such leasehold mortgagee is diligently complying with this Section 14.07, this Lease shall not then terminate, and the time for completion by such leasehold mortgagee of its proceedings shall continue so long as such leasehold mortgagee is enjoined or stayed and thereafter for so long as such leasehold mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the leasehold mortgage, assignment in lieu of foreclosure or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 14.07, however, shall be construed to extend this Lease beyond the original term hereof, nor to require a leasehold mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the leasehold mortgagee shall discontinue foreclosure proceedings, this Lease shall remain in full force and effect as if Tenant had not defaulted under this Lease.

14.08. Purchase and Sale. If the leasehold mortgagee is complying with Section 14.07, upon the acquisition of Tenant's estate herein by such leasehold mortgagee or its designee or any other purchaser at a foreclosure sale, assignment in lieu of foreclosure or otherwise, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, and Landlord shall recognize such leasehold mortgagee as the Tenant under this Lease, subject to the obligation of the leasehold mortgagee to comply with this Lease and cure any defaults which are reasonably susceptible of cure by the leasehold mortgagee (except as otherwise provided in the Lease or in Section 14.10 below). The purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any leasehold mortgage, including such mortgagee, or the transferee under any instrument of assignment or transfer in lieu of the foreclosure of the leasehold mortgage shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment.

14.09. Purchaser's/Assignee's Right to Sell. The purchaser or assignee of Tenant's leasehold estate pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings, upon acquiring Tenant's leasehold estate, may sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such purchaser or assignee without the consent or approval of Landlord. Upon such sale or assignment, the transferor shall thereafter be relieved of all obligations under this Lease if such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease.

14.10. New Lease. For as long as there is any leasehold mortgage outstanding, in the event this Lease is terminated for any reason, including, without limitation, a termination or rejection through any bankruptcy proceeding or the leasehold mortgagee or the purchaser or assignee of Tenant's leasehold estate pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings becomes the legal owner of Tenant's estate herein, and upon written request by such party given within sixty (60) days after such termination or acquisition of Tenant's estate herein, as applicable, Landlord shall enter into a new lease of the Property with the leasehold mortgagee, purchaser or assignee for the remainder of the term of this Lease with the same agreements, covenants, reversionary interests and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as are contained in this Lease and with priority equal to this Lease; provided, however, that leasehold mortgagee, purchaser or assignee, as applicable, shall promptly commence, and diligently pursue, to cure any defaults by the Tenant which are reasonably susceptible to cure by the leasehold mortgagee, purchaser or assignee (except as otherwise provided below). After such termination and cancellation of this Lease and prior to the expiration of the period within which the leasehold mortgagee, purchaser or assignee may elect to obtain a new lease from Landlord, Landlord shall refrain from terminating any existing sublease or otherwise encumbering the Property without the prior written consent of the leasehold mortgagee, purchaser or assignee.

Any new lease granted to the leasehold mortgagee, purchaser or assignee shall be in the form substantially similar to this Lease and shall enjoy the same priority in time and in right as this Lease over any lien, encumbrance or other interest created by the Landlord before or after the date of such new lease and shall vest in the leasehold mortgagee, purchaser or assignee all right, title, interest, power and privileges of Tenant hereunder in and to the Property, including, without limitation, the assignment of Tenant's interest in and to all then existing subleases and sublease rentals and the automatic vesting of title to all Improvements, fixtures and personal property of Tenant in the leasehold mortgagee, purchaser or assignee. Such new lease shall provide, with respect to each and every permitted sublease which immediately prior to the termination of this Lease was superior to the lien of the leasehold mortgage, that the leasehold mortgagee, purchaser or assignee shall be deemed to have recognized the sublessee under the sublease, pursuant to the terms of the sublease as though the sublease had never terminated but had continued in full force and effect after the termination of this Lease, and to have assumed all the obligations of the sublessor under the sublease accruing from and after the termination of this Lease, except that the obligation of the new lessee, as sublessor, under any covenant of quiet enjoyment, expressed or implied, contained in any such sublease shall be limited to the acts of such new lessee and those claiming by, under or through such new lessee.

If more than one entity claims to be the lender that is entitled to a new lease pursuant to this subsection, Landlord shall enter into such new lease with the leasehold mortgagee whose leasehold mortgage is prior in time. Landlord without liability to Tenant or any leasehold mortgagee with an adverse claim, may rely upon a lender title insurance policy issued by a responsible title insurance company doing business in the state where the Property is located as the basis for determining the appropriate leasehold mortgagee who is entitled to such new lease and the leasehold mortgagee which executes the new lease shall indemnify and hold Landlord harmless against any claims by Tenant or any other leasehold mortgagee with respect to such determination. Upon execution of a new lease by Landlord and the leasehold mortgagee, purchaser or assignee, any default under this Lease which relates to the performance of an obligation shall be deemed cured.

14.11 No Merger The leasehold estate in the Property pursuant to this Lease shall not merge with the fee interest in the Property, notwithstanding ownership of the leasehold and the fee by the same person, without the prior written consent of each Lender.

14.12 Landlord Bankruptcy

(a) If a bankruptcy proceeding is filed by or against the Landlord, the Landlord shall immediately notify each Lender of such filing and shall deliver a copy of all notices, pleadings, schedules, and similar materials regarding the bankruptcy proceedings to each Lender.

(b) The Landlord acknowledges that (i) the Tenant seeks to construct improvements on the Premises using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both the Tenant and the Lenders to sell the Premises free and clear of the leasehold. Therefore, the Landlord waives its right to sell the Landlord's fee interest in the Premises pursuant to section 363(f) of the Bankruptcy Code, free and clear of the leasehold interest under this Lease.

(c) If a bankruptcy proceeding is filed by or on behalf of the Landlord, the Landlord agrees as follows: (i) the Tenant shall be presumed to have objected to any attempt by the Landlord to sell the fee interest free and clear of the leasehold under this Ground Lease; (ii) if Tenant does not so object, each Lender shall have the right to so object on its own behalf or on behalf of the Tenant; and (iii) in connection with any such sale, the Tenant shall not be deemed to have received adequate protection under section 363(e) of the Bankruptcy Code, unless it shall have received and paid over to each Lender outstanding balance of the obligations under its respective loan.

(d) Landlord recognizes that the Lenders are authorized on behalf of the Tenant to vote, participate in or consent to any bankruptcy, insolvency, receivership or court proceeding concerning the leasehold interest under this Lease.

ARTICLE 15. MISCELLANEOUS

15.01. Holding Over. If Tenant shall hold over the Property after the expiration of the term hereof with the consent of Landlord, either express or implied, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Lease. Tenant and Landlord shall negotiate those future terms if such holding over occurs.

15.02. Attorneys' Fees. In the event that any action or arbitration is brought by either party hereto as against the other party hereto for the enforcement or declaration of any right or remedies in or under this Lease or for the breach of any covenant or condition of this Lease, then and in that event the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court or arbitrator therein including, but not limited to, reasonable attorneys' fees.

15.03. Quiet Possession. Landlord agrees that Tenant, so long as Tenant is not in default under this Lease and is paying the rent and performing the covenants and conditions of this Lease, shall quietly have, hold and enjoy the Property throughout the term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord; and Landlord warrants to Tenant that as of the Commencement Date of said lease term, there were no existing tenancies on the Property.

15.04. Force Majeure. Except as to the payment of rent, neither of the parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for

any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes or lockouts or any other cause whether similar or dissimilar to the foregoing which is beyond the control of such parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performance of this Lease.

15.05. Notices. Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and delivered to either party by personal delivery or by depositing same in the United States mail, duly certified, with postage thereon fully prepaid and addressed to the party for whom intended, as follows:

To Landlord:

Gary Luebbers, City Manager
City of Sunnyvale
3456 W. Olive Avenue
Sunnyvale, California 94086

To Tenant:

MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attention: Matthew Franklin, President

Either party hereto may from time to time by written notice to the other party designate a different address which shall be substituted for the one above specified. Notices shall be effective when received. Any notice or other document sent by certified mail, as aforesaid, shall be deemed received seventy-two (72) hours after the mailing thereof, as above provided. Notices or other documents sent by personal delivery shall be deemed received on the date of such delivery.

15.06. Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

15.07. Surrender. Upon the expiration or sooner termination of the term of this Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord all and singular the Property, together with the improvements then situated thereon, in good condition and repair, except for reasonable wear and tear.

15.08. Binding. Subject to the restrictions set forth herein regarding assignment of the leasehold estate, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

15.09. Landlord's Right to Enter Property. Landlord and its authorized representatives shall have the right to enter the Property at all reasonable times, after giving Tenant three (3) business days prior written notice, for any of the following purposes: to determine whether the Property is in good condition and whether Tenant is complying with its obligations under this

Lease; to do any necessary maintenance and to make any restoration to the Property that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Lease; to post "for rent" or "for lease" signs during the last one (1) year of the term, or during any period while Tenant is in default; to show the Property to prospective brokers, agents, buyers, tenants or persons interested in an exchange, at any time during the term; and to do any act or thing necessary for the safety or preservation of the Property if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street.

Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Landlord's entry on the Property as provided in this Section other than those caused by Landlord's negligence or willful misconduct.

Tenant shall not be entitled to an abatement or reduction of rent if Landlord exercises any rights reserved in this Section.

15.10. 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 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.

15.11. Memorandum. Landlord and Tenant shall execute a Memorandum of this Lease or any amendment or modification thereof for recordation in the Official Records of Santa Clara County, California, in substantially the form attached hereto as Exhibit B.

15.12. Quitclaim. At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord within thirty (30) days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

15.13. Interpretation. The titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

15.14. Covenants and Conditions. Each term and each provision, including, without limitation, the obligation for the payment of rent, to be performed by Tenant or Landlord, as the case may be, shall be construed to be both a covenant and a condition of this Lease.

15.15. Integration. This Lease, together with the Regulatory Agreement and the exhibits and documents of both incorporated by reference, constitutes the entire agreement between the parties and there are no conditions, representations or agreements regarding the matters covered by this Lease which are not expressed herein.

15.16. Estoppel Certificate. If upon any sale, assignment or hypothecation of the Property or the land thereunder by Landlord an offset statement shall be required from Tenant, Tenant agrees to deliver, within thirty (30) days after written request therefor by Landlord, a statement in recordable form addressed to any such proposed mortgagee or purchaser, or to Landlord, in a form requested by Landlord's mortgagee or purchaser, certifying that this Lease is unmodified and is in full force and effect (if such be the case), certifying the commencement and termination dates of the lease term, certifying that there has been no assignment or sublease of this Lease and that there are no defenses or offsets hereto (or stating those claimed by Tenant) and containing such other information as may reasonably be requested by the party to whom such certificate is addressed. In the event Tenant fails to deliver such offset statement to Landlord within the 30-day period provided above, it shall be deemed that this Lease is in full force and effect and that Tenant has no defenses or offsets against Landlord.

If upon any sale, assignment or other transfer of the Tenant's leasehold interest in the Property, an estoppel statement shall be required from Landlord, Landlord agrees to deliver within thirty (30) days after written request therefor by Tenant, a statement in recordable form addressed to any such proposed transferee, certifying that this Lease is unmodified and is in full force and effect (if such be the case), certifying the commencement and termination dates of the lease term, certifying that there are no claims against Tenant under this Lease (or stating those claimed by Landlord) and containing such other information as may reasonably be requested by the party to whom such certificate is addressed. In the event Landlord fails to deliver such certificate to Tenant within the 30-day period provided above, it shall be deemed that this Lease is in full force and effect and that Landlord has no claims against Tenant under this Lease.

15.17. Landlord's Right to Sell. Landlord shall have the right to sell its fee estate in the Property and assign its interest in this Lease without limitation, provided, however, that any such sale shall be subject to this Lease. Upon any such conveyance, Landlord shall automatically be relieved of any obligations under this Lease other than those obligations which accrued prior to the date of such conveyance. Landlord shall also have the right to mortgage, hypothecate or otherwise pledge its interest in the Property and this Lease, subject to this Lease.

In the event Landlord intends to sell all or any part of the Property, Landlord shall notify Tenant of the proposed terms of such sale not later than ninety (90) days before the anticipated close of escrow. Tenant shall have sixty (60) days from the giving of such notice to exercise a right of first refusal to purchase the Property on the same terms and conditions of such proposed sale.

15.18. Environmental Contamination. Landlord and Tenant each has undertaken an initial investigation of the Property to determine the extent, if any, of environmental contamination and have not found any significant environmental risks. Tenant assumes responsibility for the investigation and remediation of contamination on or under the Property and agrees to utilize the HOME funds provided by the Landlord for this express purpose. However, if it is determined that the remediation costs shall exceed the total amount of HOME funds allocated to Tenant by the Landlord, then the parties agree to meet and confer within 30 days to determine overall project feasibility and future course of action.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first set forth above.

LANDLORD:

TENANT:

CITY OF SUNNYVALE, a municipal Corporation

MIDPEN HOUSING CORPORATION,
a California nonprofit public benefit corporation

By: _____
City Manager

By: _____
Its:

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
MIDPEN Legal Counsel

EXHIBIT A

DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION FOR A LEASE PARCEL
(SUNNYVALE ARMORY PROJECT)

LEASE AREA 1
(Family Housing – MidPen Development)

BEING PORTIONS OF LOTS 2 AND 3 OF BLOCK 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED “MAP OF THE FAIROAKS ADDITION TO THE TOWN OF SUNNYVALE”, FILED IN BOOK “L” OF MAPS AT PAGE 4, SANTA CLARA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2 AND THENCE ALONG THE LINE DIVIDING LOTS 1 AND 2 OF SAID “MAP OF THE FAIROAKS ADDITION...” NORTH 14° 52’ 00” EAST 313.62 FEET, MORE OR LESS, TO THE SOUTHERLY RIGHT OF WAY OF EAST MAUDE AVENUE;

THENCE ALONG SAID RIGHT OF WAY SOUTH 67° 32’ 00” EAST 184.62 FEET TO A LINE PARALLEL WITH AND DISTANT 183.00 FEET FROM THE WESTERLY LINE OF SAID LOT 2;

THENCE ALONG SAID PARALLEL LINE SOUTH 14° 52’ 00” WEST 289.20 FEET. MORE OR LESS, TO THE SOUTHERLY LINE OF SAID LOT 3 OF SAID MAP;

THENCE ALONG SAID LINE NORTH 75° 08’ 00” WEST 183.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.27 ACRES, MORE OR LESS.

END OF DESCRIPTION.

Prepared By: Carroll Engineering, Inc.
05/16/2013
Philip Wooton, PLS
LS No. 8398

EXHIBIT B

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO

City of Sunnyvale
330 W. 20th Avenue
Sunnyvale, CA 94403
ATTN: Neighborhood Improvement
and Housing

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF LEASE

This Memorandum of Lease (hereinafter "Memorandum") is entered into as of _____, 2013, by and between the CITY OF SUNNYVALE, a municipal corporation, (hereinafter "Landlord"), and MIDPEN HOUSING CORPORATION, a California nonprofit public benefit corporation (hereinafter "Tenant") with respect to that certain ground lease (the "Lease") dated as of _____, 2013, between Landlord and Tenant.

Pursuant to the Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the real property (the "Property") more particularly described in Exhibit A, attached hereto and incorporated herein by this reference. The Lease is for a term of ninety (90) years, commencing on _____ (the "Commencement Date"), and ending on _____ (the "Termination Date").

Pursuant to the Lease, Tenant agrees to construct improvements on the Property within the time and manner required by the Lease.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum by proper persons thereunto duly authorized as of the first date hereinabove written.

LANDLORD:

CITY OF SUNNYVALE, a municipal corporation

By _____
City Manager

TENANT:

MIDPEN HOUSING CORPORATION,
a California nonprofit public benefit corporation

By _____
Its _____

EXHIBIT C

SCOPE OF DEVELOPMENT

I. GENERAL

The Developer agrees that the Leased Parcel shall be developed and improved in accordance with the provisions of this Agreement and the plans, drawings and related documents approved by the City of Sunnyvale pursuant hereto.

II. DEVELOPER IMPROVEMENTS

The Developers shall construct, or cause to be constructed, on the Leased Parcel approximately fifty eight (58) units of rental housing and a parking structure containing approximately ninety four (94) parking spaces to serve the rental housing.

The overall development shall consist of one building over a single-story, at-grade podium parking garage. The proposed building will range from one to four stories with heights that range from 32 to 52 feet. The building consists of approximately 58 residential units, including 27 one-bedroom units, 12 two-bedroom units and 19 three-bedroom units, together with a laundry room, computer room, and outdoor play area.

III. ARCHITECTURE AND DESIGN

The improvements on the Leased Parcel shall be of high architectural quality, shall be well-landscaped, and shall be effectively and aesthetically designed. The plans submitted by the Developer shall describe in detail the architectural character intended for the improvements.

IV. LANDSCAPING

Landscaping shall embellish all open spaces upon the Site to integrate the Developer's improvements with adjacent sites within the area. Landscaping includes such materials as paving, trees, shrubs and other plant materials, landscape containers, plaza furniture, top soil preparation, automatic irrigation, landscape and pedestrian lighting. Landscaping shall carry out the objectives and principles of the City's desire to accomplish a high-quality aesthetic environment.

V. SITE CLEARANCE AND PREPARATION

A. On-Site Demolition and Clearance

1. The Developer shall demolish and remove all existing buildings and surface parking lots on the Leased Parcel.

2. The Developer shall remove, plug and/or crush in place existing utilities, such as storm sewers, sanitary sewers, water systems, electrical overhead and underground systems and telephone and gas systems located on the Leased Parcel, as may be required following any necessary relocation of the utilities.

B. Compaction, Finish Grading and Site Work

The Developer shall compact, finish grade and do such site preparation as is necessary for the construction of their improvements on the Leased Parcel.

VI. MISCELLANEOUS

A. Phasing of Development

The development of improvements on the MidPen Housing Parcel may precede, be concurrent or follow the development of improvements on the Charities Housing Parcel.

EXHIBIT D
Implementation Schedule

	Milestone	Date for Completion
1	Provider submits first application for Low Income Housing Tax Credits	Initial application will occur at first opportunity once gap financing is secured and Land Development and Environmental Approvals have been obtained.
2	Provider submits subsequent applications for Low Income Housing Tax Credits	Twice annually if initial application is not successful until tax credit award is secured.
3	Provider commences construction of Project.	Two (2) years following receipt of Land Development Approvals with ability to extend for an additional 2 years.
4	Provider completes construction of Project.	Eighteen (18) months following commencement of construction of Project.
5	Provider commences operation of Project by placing first homeless housing unit in service.	Upon certification of occupancy for first housing unit.
6	Provider places the last homeless housing unit in service.	Five (5) years from Lease of Armory Property to Providers with additional extensions depending on need, as provided in Section 3 above.

ATTACHMENT C

GROUND LEASE BETWEEN
THE CITY OF SUNNYVALE AND CHARITIES HOUSING

GROUND LEASE

by and between

**CITY OF SUNNYVALE
AS “LANDLORD”**

and

**CHARITIES HOUSING DEVELOPMENT CORPORATION
OF SANTA CLARA COUNTY
AS “TENANT”**

CONCERNING CERTAIN REAL PROPERTY LOCATED IN THE
CITY OF SUNNYVALE, CALIFORNIA

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. PROPERTY AND BACKGROUND	1
1.01. Overview	1
1.02. Property	1
1.03. Lease	1
ARTICLE 2. TERM.....	1
2.01. Term	1
2.02. Commencement	1
ARTICLE 3. RENT	1
3.01. Lump Sum Payment.....	1
ARTICLE 4. TAXES AND ASSESSMENTS	2
4.01. Personal Property Taxes	2
4.02. Real Property Taxes	2
4.03. New Assessments	2
4.04. Tenant's Tax Liability Prorated	2
4.05. Permitted Contests	3
ARTICLE 5. USE, CHARACTER, OPERATION AND MAINTENANCE OF IMPROVEMENTS	3
5.01. General	3
5.02. Use Obligations	3
5.03. Use Prohibitions	4
5.04. General Standards of Maintenance	5
5.05. Governmental Requirements	6
ARTICLE 6. CONSTRUCTION AND LIENS.....	6
6.01. Initial Construction of Improvements	6
6.02. Construction Standards	7
6.03. Additional Construction on Property	8
6.04. Protection of Landlord	9
6.05. Notice	10
ARTICLE 7. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY	10
7.01. Ownership of Improvements During Term	10
7.02. Landlord's Right on Default by Tenant	10
7.03. Removal and Ownership at Termination	10
ARTICLE 8. UTILITIES	11

	<u>Page</u>
ARTICLE 9. INSURANCE AND INDEMNITY	11
9.01. Indemnity	11
9.02. Insurance	11
9.03. Review	12
9.04. Proof of Coverage	12
ARTICLE 10. DAMAGE OR DESTRUCTION.....	12
10.01. Restoration	12
10.02. Right to Terminate Upon Destruction During Final Years of Lease Term	13
10.03. Waiver	13
10.04. Determination of Extent of Destruction; Interference with Use	13
10.05. Procedures for Repair and Restoration	13
10.06. Right to Terminate Upon Destruction By Uninsured Casualty or Where Insufficient Insurance Proceeds.....	14
10.07. Procedures for Certain Permitted Terminations	14
ARTICLE 11. CONDEMNATION	15
11.01. Definitions	15
11.02. Parties' Rights and Obligations to be Governed by Lease	16
11.03. Total Taking	16
11.04. Effect of Partial Taking	16
11.05. Restoration of the Property	16
11.06. Waiver of CCP Section 1265.130	16
11.07. Award	16
ARTICLE 12. ASSIGNMENT AND SUBLETTING.....	17
ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES	17
13.01. Defaults by Tenant	17
13.02. Landlord's Remedies	18
13.03. Default Not Susceptible to Cure Within Prescribed Period	19
13.04. Damages	19
13.05. Landlord's Right to Cure Tenant's Default	20
ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS.....	20
14.01. Leasehold Mortgage Authorized	20
14.02. Notice to Landlord	20
14.03. Definitions	20
14.04. Consent of Leasehold Mortgagee Required	21
14.05. Default Notice	21
14.06. Notice to Leasehold Mortgagee	21
14.07. Mortgagee to Foreclose	22
14.08. Purchase and Sale	22
14.09. Purchaser's/Assignee's Right to Sell	22
14.10. New Lease	23
14.11. No Merger	23
14.12. Landlord Bankruptcy	24

	<u>Page</u>
ARTICLE 15. MISCELLANEOUS	24
15.01. Holding Over	24
15.02. Attorneys' Fees	24
15.03. Quiet Possession	24
15.04. Force Majeure	24
15.05. Notices	25
15.06. Waiver	25
15.07. Surrender	25
15.08. Binding	25
15.09. Landlord's Right to Enter Property	25
15.10. Disclaimer of Partnership	26
15.11. Memorandum	26
15.12. Quitclaim	26
15.13. Interpretation	26
15.14. Covenants and Conditions	26
15.15. Integration	26
15.16. Estoppel Certificate	26
15.17. Landlord's Right to Sell	27
15.18. Environmental Contamination	27

EXHIBITS

Exhibit A	Description of the Property
Exhibit B	Form of Memorandum of Lease
Exhibit C	Scope of Development
Exhibit D	Schedule of Performance

GROUND LEASE

THIS GROUND LEASE (the "Lease") is made and entered into as of _____, 2013, by and between the CITY OF SUNNYVALE, a California municipal corporation (hereinafter called "Landlord"), and CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA COUNTY, a California nonprofit public benefit corporation (hereinafter called "Tenant"), who agree as follows:

ARTICLE 1. PROPERTY AND BACKGROUND

1.01 Overview. The purpose of this Lease is to effectuate the Development Plans for the former National Guard Armory site owned by the City of Sunnyvale and located at 620 E. Maude Avenue for the construction, development and operation thereon of 58 units of affordable rental housing that will be made available to persons and families of very low and low income to the extent provided for in this Lease. The Armory Project is the off-site accommodation given by the City Council, acting as the Onizuka Air Force Base Local Redevelopment Authority, in lieu of implementing a consolidated housing program at the Onizuka Air Force Station.

Landlord, and Tenant, as one of the joint venture Developers of the Armory Project along with Charities Housing (collectively referred to as the "Housing Providers"), have previously agreed to initial terms for the lease, development, construction and operation of the Armory Project.

1.02. Property. Landlord owns the real property located in the City of Sunnyvale, Santa Clara County, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein, and which is hereinafter called the "Property."

1.03. Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Property, for the term and upon the covenants and conditions set forth herein.

ARTICLE 2. TERM

2.01. Term. Unless terminated earlier in accordance with the provisions of this Lease, the term of this Lease shall be for a period of ninety (90) years. The term shall expire at 11:59 p.m. on the day immediately preceding the ninetieth (90th) anniversary of the Commencement Date (as defined in Section 2.02.).

2.02. Commencement. The term of this Lease shall commence upon the date of execution by all parties. A "Lease Year" shall be the one-year period from the Commencement Date or anniversary thereof to 11:59 p.m. on the day immediately preceding the anniversary of the Commencement Date or an anniversary thereof.

Notwithstanding any other provision of this Lease to the contrary, the parties agree that transfer of possession and exclusive use of the Property shall not occur until April 15, 2014. Immediately upon the transfer of possession to the Tenant, the parties shall record a memorandum of this Lease in the office of the County Recorder of Santa Clara County pursuant to Section 15.11 of this Lease.

ARTICLE 3. RENT

3.01 Lump Sum Payment. On January 1, 2014, Tenant shall pay Landlord one lump sum payment of \$3.7 million for the entire term of the lease.

ARTICLE 4. TAXES AND ASSESSMENTS

4.01. Personal Property Taxes. Tenant shall pay before delinquency all taxes, assessments, license fees and other charges ("taxes") that are levied and assessed against Tenant's personal property installed or located in or on the Property which become payable during the term. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

4.02. Real Property Taxes. Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. To the extent permitted by law, Landlord will cooperate as necessary to allow Tenant to pursue any applicable property tax exemption. Tenant shall pay all real property taxes and general and special taxes ("real property taxes") levied and assessed against the Property and all real property taxes levied against Tenant's improvements in the Property; provided that Tenant may seek and obtain a "welfare exemption" or other applicable exemptions from the payment of such assessments. Each year Landlord shall notify Tenant of the real property taxes, and immediately on receipt of the tax bill, shall furnish Tenant with a copy of the tax bill. Tenant shall, semi-annually, pay the real property taxes not later than the taxing authority's delinquency date. If at any time during the term of this Lease any authority having the power to tax, including, without limitation, any federal, state, county or city government or any political subdivision thereof (collectively, "taxing authority"), shall alter the methods and/or standards of taxation and assessment against the legal or equitable interests of Landlord in the Property or the improvements located or constructed thereon, in whole or in part, so as to impose a monetary obligation on Landlord in lieu of or in addition to the taxes and assessments in existence as of the date of this Lease, such taxes or assessments based thereon, including, without limitation, (a) a tax, assessment, excise, surcharge, fee, levy, penalty, bond or similar imposition (collectively, "impositions"), on Landlord's right to rental or other income from the Property or as against Landlord's leasing of the Property, (b) any impositions in substitution or in lieu, partially or totally, of any impositions assessed upon real property prior to any such alteration, (c) any impositions allocable to or measured by the area of the Property or the rental payable hereunder, including, without limitation, any impositions levied by any taxing authority with respect to the receipt of such rental or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant or any subtenant of the Property or any portion thereof, (d) any impositions upon this lease transaction or any document to which Tenant is a party which creates or transfers any interest or estate in or to the Property (other than any transfer tax which may be due upon recordation of the Memorandum of Lease described in Section 15.11), or (e) any special, unforeseen or extraordinary impositions which, although not specifically described above, can fairly be characterized as a real property tax or a substitute for real property tax, shall be considered as "real property taxes" for the purposes of this Lease. "Real property taxes" shall exclude, however, all general income taxes, gift taxes, inheritance taxes and estate taxes owed by Landlord.

4.03. New Assessments. If any general or special assessment is levied against the Property, Landlord shall elect to pay such assessments in installments, rather than in full, and Tenant shall promptly pay the installments when due.

4.04. Tenant's Tax Liability Prorated. Tenant's liability to pay real property taxes and new assessments shall be prorated on the basis of a 365-day year to account for any fractional

portion of a fiscal tax year included in the lease term at its inception and expiration or earlier termination in accordance with this Lease.

4.05. Permitted Contests. Tenant, at its cost, shall have the right at any time to seek a reduction in the assessed valuation of the Property or to contest any real property taxes that are to be paid by Tenant. If Tenant seeks a reduction or contests the real property taxes, the failure on Tenant's part to pay the real property taxes shall not constitute a default as long as Tenant complies with the provisions of this paragraph.

Landlord shall not be required to join in any proceeding or contest brought by Tenant unless the provisions of any law require that the proceeding or contest be brought by or in the name of Landlord or any owner of the Property. In that case Landlord shall join in the proceeding or contest or permit it to be brought in Landlord's name as long as Landlord is not required to bear any cost. Tenant, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered, together with all costs, charges, interest and penalties incidental to the decision or judgment. If Tenant does not pay the real property taxes when due and Tenant seeks a reduction or contests them as provided in this paragraph, before the commencement of the proceeding or contest Tenant shall furnish to Landlord a surety bond issued by an insurance company qualified to do business in California. The amount of the bond shall equal one hundred percent (100%) of the total amount of real property taxes in dispute. The bond shall hold Landlord and the Property harmless from any damage arising out of the proceeding or contest and shall insure the payment of any judgment that may be rendered.

ARTICLE 5. USE, CHARACTER, OPERATION AND MAINTENANCE OF IMPROVEMENTS

5.01. General. Tenant shall use the Property and the improvements thereon only for the Armory Project as specified herein in accordance with all applicable laws, regulations, and Armory Project approvals. For the entire ninety (90) year lease term, Tenant shall use the Property and the improvements thereon for no other purpose without the prior written consent of Landlord.

5.02. Use Obligations.

a. Affordable Housing Covenants.

Tenant acknowledges that, with the exception of one (1) unrestricted two-bedroom manager's unit, all of the fifty-nine (59) apartments developed on the Property shall be income-restricted to the extent and for the duration required in the City of Sunnyvale Housing Mitigation Fund Loan and Regulatory Agreement and Declaration of Restrictive Covenants and the City of Sunnyvale HOME Regulatory Agreement to be entered into by Tenant ("Regulatory Agreements").

b. Nondiscrimination and Nonsegregation.

Tenant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Tenant itself or any person claiming under or through it establish or permit any such practice or practices of

discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

Tenant shall refrain from restricting the rental, sale or lease of the Property on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(2) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased."

(3) In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

5.03. Use Prohibitions. Tenant agrees that in connection with the use and operation of the Property it will not:

a. Use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the improvements in such manner that any sounds reproduced, transmitted or

produced shall be directed primarily beyond the interior of the improvements or common areas (provided, however, that nothing herein shall be deemed to prohibit the installation and use of a public address system for security purposes), and will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the interior of the improvements or common areas; or

b. Cause or permit obnoxious odors to emanate or be dispelled from the improvements; or

c. Permit undue accumulations of garbage, trash, rubbish or any other refuse; or

d. Create, cause, maintain or permit any nuisance in, on or about the Property; or

e. Commit or suffer to be committed any waste in, on or about the Property; or

f. Use or allow the Property to be used for any improper, immoral or unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Property; or

g. Do or permit to be done anything which in any way unreasonably disturbs the occupants of neighboring property; or

h. Cause or permit any insurance coverage on the Property or the improvements thereon to become void or voidable or make it impossible to obtain any required insurance at commercially feasible rates; or

i. Cause or permit any structural damage to the Property or the improvements thereon or to any adjacent public or private property, subject to acts of nature; or

j. Violate any law, ordinance or regulation applicable to the Property and the improvements thereon.

5.04. General Standards of Maintenance. Upon transfer of possession of the Property to Tenant and for the remaining duration of the Agreement term, Tenant shall be responsible for all maintenance of the Property. Tenant shall be fully responsible for the operation and maintenance of all of Tenant's improvements on the Property, and any open space and common areas on the Property, and shall operate and maintain, or cause to be operated and maintained, such improvements and open space and common areas in good order, condition and repair subject only to normal wear and tear customary for affordable housing projects

Without limiting the generality of the foregoing, Tenant shall observe the following standards:

a. Maintain the surface of all pedestrian areas level, smooth and evenly covered with the type of surfacing material originally installed thereon or such substitute thereof as shall be in all respects equal thereto or better in quality, appearance and durability;

b. Remove all papers, debris, filth and refuse, and sweep, wash down and/or clean all hard surfaces, including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members as required;

- c. Maintain such appropriate entrance, exit and directional signs, markers and lights as shall be reasonably required and which are in accordance with the practices prevailing in the operation of similar developments;
- d. Clean lighting fixtures and relamp and/or reballast as needed;
- e. Repaint striping, markers, directional signs, etc., as necessary to maintain in good condition;
- f. Maintain landscaping as necessary to keep in a thriving condition;
- g. Maintain signs, including relamping and/or reballasting and/or repairing as required;
- h. Maintain and keep in good condition and repair all benches, shelters, planters, mall coverings, banners, furniture, trash containers, sculptures and other exterior elements;
- i. Maintain and keep in a sanitary condition public restrooms and other common-use facilities;
- j. Clean, repair and maintain all common utility systems to the extent that the same are not cleaned, repaired and maintained by public utilities;
- k. Maintain all buildings and parking structures as well as open space common areas;
- l. Provide adequate security lighting in all areas during periods of unrestricted public access, and maintain all security and decorative light fixtures and associated wiring systems;
- m. Maintain all surface and storm lateral drainage systems; and
- n. Maintain all sanitary sewer lateral connections.

5.05. Governmental Requirements. Tenant shall at all times comply with, and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with, any and all laws, statutes, ordinances, rules and regulations ("laws") which apply to the operation and use of the Property, including those requiring alterations or additions to be made to, or safety appliances and devices to be maintained or installed in, on or about the Property under any laws now or hereafter adopted, enacted or made and applicable to the Property, and payment of any fees, charges or assessments arising out of or in any way related to the Property as a source of adverse environmental impacts or effects.

ARTICLE 6. CONSTRUCTION AND LIENS

6.01. Initial Construction of Improvements

a. Construction. Within the time and in the manner set forth in this Lease and, in particular, the Scope of Development (Exhibit D) and the Schedule of Performance (Exhibit E), Tenant shall construct or cause to be constructed the improvements required to be constructed on the Property in full conformity with the construction plans, drawings, planning

permits, conditions of approval and related documents approved by the Landlord for Zoning and Design Review Approval ("Land Development Approval"). Such improvements are referred to herein as the "Initial Construction."

b. Completion. Tenant shall take all steps necessary to enable it to commence, and will commence, the Initial Construction, and will diligently prosecute and complete such Initial Construction within the times set forth in the Schedule of Performance.

6.02. Construction Standards.

a. General Construction Standards. All demolition, construction, alteration or repair work permitted herein (including the Initial Construction) shall be accomplished expeditiously and diligently and must comply with all applicable codes. Tenant shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. Tenant shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated therewith and shall indemnify and hold Landlord harmless from all damages, losses or claims attributable to the performance of such work. Dust, noise and other effects of such work shall be controlled using the best accepted methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area.

b. Utility Work. Any work performed by or on behalf of Tenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to occupants and other persons.

c. Use of Plans. The contracts with any architect, other design professional or any general contractor shall provide, in form and substance reasonably satisfactory to Landlord, for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder, and Landlord shall be furnished with any such agreement, together with the further agreement of the parties thereto, that if this Lease is terminated due to Tenant's default, Landlord may use any plans and specifications to which Tenant is then entitled pursuant to any such contract without payment of any further sums to any party thereto.

d. Compliance with Construction Documents and Laws; Issuance of Permits. All improvements on the Property shall be constructed in compliance with any construction documents approved by Landlord and also in compliance with all applicable local, state and federal laws and regulations. Tenant shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction.

e. Construction Safeguards. Tenant shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by Tenant, all necessary safeguards for the protection of workers and the public.

f. Conditions to Commencement of Construction. In no event shall Tenant commence any construction on the Property until the following conditions have been satisfied or otherwise expressly waived by Landlord, in addition to other conditions and requirements imposed by this Lease:

(1) Landlord has approved Tenant's final plans and specifications for the improvements;

(2) Tenant has obtained binding commitments for financing and equity capital necessary for the full payment of construction of the improvements, together with any required operating capital;

(3) Tenant has obtained building permits and all other governmental approvals necessary for the construction of the improvements;

(4) Tenant has entered into complete and binding contracts with its contractor or contractors for the construction of the improvements; and

(5) Tenant and/or its general contractor has obtained labor and material payment and performance bonds in an amount not less than the cost of construction of the improvements, which bonds shall name Landlord as a co-obligee.

g. 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 Property is required by law.

Tenant and Landlord each recognize that in order to provide for the orderly development of the Property and the overall management and operation of the improvements, it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easements and dedications, and similar rights be granted or dedicated over or within portions of the Property. Landlord agrees that it will, upon request of Tenant, join with Tenant in executing and delivering such documents, from time-to-time, and throughout the term of this Lease as may be appropriate, necessary or required by governmental agencies and public utility companies for the purpose of granting such easements and dedications. All costs and expenses incurred by Landlord in connection therewith shall be reimbursed to Landlord by Tenant promptly upon written demand therefor by Landlord.

h. Rights of Access. Representatives of Landlord shall have the right of reasonable access to the Property and the improvements thereon without charges or fees, and at normal construction hours during the period of construction, for the purposes of ascertaining compliance with the terms of this Lease, including, but not limited to, the inspection of the construction work being performed. Landlord's access shall be reasonably calculated to minimize interference with Tenant's construction and/or operations.

i. Notice of Completion. Upon completion of any construction, Tenant shall file or cause to be filed in the Official Records of the County of Santa Clara a Notice of Completion (the "Notice of Completion") with respect to the improvements, and Tenant shall deliver to Landlord, at no cost to Landlord, two (2) sets of final as-built plans and specifications of the improvements.

6.03. Additional Construction on Property.

a. Construction Standards. Any additional building erected on any portion of the Property as permitted under this Lease, any remodeling or reconstruction work undertaken on or within any existing building on any portion of the Property, and any alteration of or addition to open spaces or common area, shall at all times be substantially in accordance with plans

therefor submitted to and approved by Landlord in accordance with subsection b. of this Section 6.03. Any such development or construction of additional buildings, remodeling or reconstruction of any building on any portion of the Property, or alteration of or addition to open spaces or common area, shall at all times meet in all material respects the requirements of the Scope of Development and shall conform in all material respects to the approved design concepts, so that the exterior of all such buildings, including, without limitation, exterior elevations and color thereof, and all such other improvements, will be architecturally and aesthetically compatible and harmonious with the other buildings and improvements on the Property to create a uniform general plan for the Property. All construction shall be diligently prosecuted and accomplished without cost or expense to Landlord, and in a good and workmanlike manner.

b. Landlord's Approval of Plans. Landlord shall have rights of approval with respect to any construction, reconstruction or remodeling work undertaken prior to Landlord's issuance of the Certification of Completion for the Property. Following completion of the Initial Construction and issuance of said Certificate of Completion, any construction, reconstruction or remodeling undertaken by Tenant on the Property shall be governed by the following:

(1) Tenant shall have the right, without Landlord's consent (but subject to all other provisions of this Lease), to undertake any interior, nonstructural remodeling of the Tenant's improvements not visible from the outside or affecting exterior appearance and not altering the pre-existing location of the improvements on the Property;

(2) If Tenant at any time desires to undertake any construction, reconstruction, demolition or remodeling on the Property which is not exempt from Landlord's approval as provided in subsection 6.03.b.(1), above, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review and written approval, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably necessary for Landlord to make an informed decision on such submission. Landlord shall approve or disapprove such submitted plans within thirty (30) days of receipt of complete plans and specifications meeting the requirements of this subsection. Failure of the Landlord to specify any objection to such plans and specifications or make a proposal that would add to or change the plans and specifications within such 30-day period shall be deemed to be an approval. The plans and specifications shall comply with this Lease and shall be in compliance with existing building codes and other laws, regulations and ordinances; and

(3) No material changes to the approved plans and specifications shall be made without the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed.

6.04. Protection of Landlord. Nothing in this Lease shall be construed as constituting the consent of Landlord, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Tenant or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in such manner as would give rise to the filing of mechanics' liens or other claims against the fee of the Property or the improvements thereon. Landlord shall have the right at all reasonable times to post, and keep posted, on the Property any notices which Landlord may deem necessary for the protection of Landlord and of the Property and the 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 Property 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 Property and the improvements thereon, subject to Tenant's right to contest same.

Tenant shall keep the Property and such improvements free and clear of all 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, reasonable attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it.

In the event any lien is recorded and not expunged within sixty (60) days of recording, Tenant shall, upon demand, furnish the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Property.

6.05. Notice. Should any claims of lien be filed against the Property or the improvements thereon, or any action affecting the title to such Property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

ARTICLE 7. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY

7.01. Ownership of Improvements During Term. All improvements constructed on the Property by Tenant as permitted or required by this Lease shall, during the term of this Lease, be and remain the property of Tenant; provided, however, that Tenant's rights and powers with respect to the improvements are subject to the terms and limitations of this Lease and Tenant's interest in such improvements shall terminate upon the expiration or sooner termination of this Lease. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

7.02. Landlord's Right on Default by Tenant. In the event of any default on the part of Tenant in performing the terms and provisions of this Lease entitling Landlord to possession of the Property and after the expiration of any applicable cure period, Landlord shall have the immediate right of possession of all personal property and the right to assume any ownership or leasehold interest of Tenant in any financed or leased personal property, subject to the rights of third-party lenders and equipment lessors.

7.03. Removal and Ownership at Termination. At the expiration or sooner termination of the term of this Lease, Landlord may, at Landlord's election, require the removal from the Property, at Tenant's sole cost and expense, of all personal property (other than fixtures), or of certain personal property (other than fixtures), as specified in the notice provided for below. A request to take effect at the normal expiration of the term shall be effected by notice given at least one hundred twenty (120) days before the expiration date. A demand to take effect on any other termination of this lease term shall be effectuated by notice given concurrently with notice of such termination or within ten (10) days after such termination. Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of personal property which Tenant has failed to remove after demand pursuant to this Section.

Tenant may remove any personal property from time to time, during the term of this Lease, and within forty-five (45) days of the expiration of the term of this Lease, that may be removed without damage to the structural integrity of the Property and the improvements thereon. Tenant shall repair all damage caused by any such removal.

Any personal property not removed by Tenant within forty-five (45) days following expiration of the term shall be deemed to be abandoned by Tenant and shall, without compensation to Tenant, then become the Landlord's property, free and clear of all claims to or against it by Tenant or any other person.

ARTICLE 8. UTILITIES

Tenant shall pay when due and shall hold Landlord harmless from any liability for all charges for water, gas, sewage, electricity, telephone and other utility service supplied to the Property.

ARTICLE 9. INSURANCE AND INDEMNITY

9.01. Indemnity. Tenant agrees to protect and does hereby indemnify and hold Landlord harmless from all demands, claims, actions and damages to any person or property (including reasonable attorneys' fees) arising out of or connected with the use or occupancy of the Property by Tenant other than those attributable to the negligence or willful misconduct of Landlord.

9.02. Insurance.

a. General. Without limiting the Tenant's indemnification of the Landlord, the Tenant shall provide and maintain at its own expense during the term of this Lease the following programs of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to the Landlord (as determined by the Landlord's Risk Manager) and evidence of such programs satisfactory to the Landlord shall be delivered to the Landlord on or before the Commencement Date of this Lease. Such evidence shall specifically identify this Lease and shall contain express conditions that the Landlord is to be given written notice at least thirty (30) days in advance of any modification or termination of any program of insurance.

b. During Construction. During the period of construction, the Tenant shall provide or cause its contractors or subcontractors to furnish the following forms and amounts of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

(1) Builders All-Risk Insurance covering the entire work against loss or damage until completion and acceptance by the Landlord. Such insurance shall be in an amount equal to the replacement value of the subject improvements and endorsed for broad form property damage, breach of warranty, and explosions, collapse and underground hazards. Reasonable deductibles will be allowed.

(2) Comprehensive General Liability Insurance endorsed for premises-operations, products/completed operations and contractual liability, in the amount of One Million Dollars (\$1,000,000) primary and Four Million Dollars (\$4,000,000) excess coverage.

(3) Comprehensive Auto Liability Insurance endorsed for all owned and non-owned vehicles with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence.

(4) Worker's Compensation Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California and which specifically

covers all persons providing services on behalf of Tenant and all risks to such persons under this Lease.

c. Following Completion of Construction. During the term of this Lease, following the issuance of a Certificate of Completion for the Initial Construction, Tenant shall provide the following forms and amounts of insurance with respect to the Property. Such insurance shall be primary to and not contributing with any other insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

(1) Fire and Extended Coverage Insurance in All-Risk form, with vandalism and malicious mischief endorsements and an earthquake endorsement (if obtainable at commercially reasonable rates) covering all improvements against loss or damage in an amount equal to not less than 100% of the replacement cost, with such deductible as shall be reasonable in comparison with similar properties. Landlord shall be made an additional insured on any policy of insurance required by any permanent or construction lender.

(2) Rental Income Protection Insurance covering loss due to the above perils, with a period of indemnity not less than six (6) months.

(3) Comprehensive General Liability Insurance endorsed for premises-operation, products/completed operations, contractual and broad form property damage with a combined single limit of not less than One Million Dollars (\$1,000,000) primary and Four Million Dollars (\$4,000,000) excess coverage per occurrence.

9.03. Review. The liability insurance requirements may be reviewed by Landlord and Tenant every five (5) years for the purpose of mutually increasing (in consultation with their respective insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards. If the parties are unable to mutually agree upon such new limits within thirty (30) days of a written demand by one party upon the other, the determination of an independent insurance advisor selected by the parties' insurance advisors shall be binding upon the parties.

9.04. Proof of Coverage. All policies required hereunder shall be with California admitted companies having a Best's A rating (and if Best's no longer exists, an equivalent rating). Executed copies of all policies of insurance or certificates thereof shall be delivered to Landlord. All insurance policies required by this Article 9 shall name Landlord as an additional insured. As often as any such policies shall expire or terminate, renewal or additional policies shall be procured and maintained in like manner and to like extent. All policies of insurance must contain a provision that the company writing such policy will give both parties thirty (30) days advance written notice of any cancellation or lapse of the effective date or any reduction in the amounts of insurance.

Nothing in this Article 9 shall prevent Tenant from carrying insurance of the kind required of Tenant under a blanket insurance policy or policies which cover other properties owned or operated by Tenant. Tenant shall provide Landlord with certificates of insurance naming Landlord as an additional insured and setting forth the required coverage.

ARTICLE 10. DAMAGE OR DESTRUCTION

10.01. Restoration. No loss or damage by fire or any other cause resulting in either partial or total destruction of any improvements now or hereafter located on the Property, or any fixtures, equipment or machinery used or intended to be used in connection with the Property or

the improvements thereon, shall (except as otherwise provided in Section 10.02 and 10.06, below) operate to terminate this Lease or to relieve or discharge Tenant from the payment of any rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Except as otherwise provided in Sections 10.02 and 10.06, and subject to lenders' rights with respect to casualty insurance proceeds, Tenant covenants to repair or cause to be repaired and/or reconstruct or cause to be reconstructed any improvements so damaged or destroyed to the extent, condition and value of such improvements immediately prior (or if Tenant was in default of its maintenance and repair obligations at the time of such damage or destruction, to the condition and value which would have existed if Tenant had not been in default) to such damage or destruction, assuming full compliance with this Lease. Tenant's failure to make such full repair and restoration under any conditions in which it has elected or is required so to do shall constitute a default hereunder.

10.02. Right to Terminate Upon Destruction During Final Years of Lease Term. If, during the last ten (10) years of the term, the improvements on the Property are totally or partially destroyed, and if the cost of restoration exceeds ten percent (10%) of the replacement cost of the improvements on the Property immediately before the damage or destruction, Tenant may elect to terminate this Lease, provided that Tenant complies with all of the following conditions:

- a. Tenant gives Landlord written notice of the damage or destruction within ten(10) days after the event causing such damage or destruction;
- b. Tenant is not in default under any provision or condition of this Lease;
- c. Tenant gives Landlord written notice of the estimated cost of repairing or restoring such damage or destruction, together with notice of its election to terminate this Lease pursuant to this Section 10.02 within ninety (90) days of the event causing the damage or destruction; and
- d. Tenant delivers possession of the Property and improvements thereon to Landlord and quitclaims to Landlord all right, title and interest in the Property and the improvements thereon.

If Tenant so elects to terminate this Lease under this Section, then Tenant shall, at its expense, promptly remove all debris and put the Property in a safe condition. Thereupon, this Lease shall terminate and the parties shall have no further obligations to each other excepting those previously accrued but theretofore unsatisfied.

10.03. Waiver. The provisions of this Article 10 shall govern the rights of the parties in the event of any full or partial destruction of the Property. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or law with respect to any destruction of the Property or the improvements thereon.

10.04. Determination of Extent of Destruction; Interference with Use. For the purposes of Section 10.02, the extent of destruction of the improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord by the full replacement cost of the improvements, applying thereto the percentage change in construction cost for the applicable period based upon the Engineering News Record average construction cost index for such period, applicable to the San Francisco-Oakland Area, or in the absence of such index, a similar index prepared for such area.

10.05. Procedures for Repair and Restoration. In the event of any damage or destruction, Tenant shall promptly give Landlord written notice of such damage or destruction and the date on which such damage or destruction occurred. Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided below, amounts received on account of any losses pursuant to insurance policies shall, to the extent made available by Tenant's lenders, be used and expended for the purpose of fully repairing or reconstructing the portions of the improvements on the Property which have been destroyed or damaged.

Tenant shall commence and complete or cause to be commenced and completed, in a good and workmanlike manner and in accordance with Sections 6.02 through 6.05, the reconstruction or repair of any part of the improvements on the Property damaged or destroyed, after Landlord and Tenant's lenders, to the extent applicable, have approved Tenant's plans, drawings, specifications and construction schedule for such reconstruction or repair.

10.06. Right to Terminate Upon Destruction By Uninsured Casualty or Where Insufficient Insurance Proceeds.

a. If the improvements on the Property are damaged or destroyed by any casualty where the casualty causing such damage or destruction is not required to be insured against under the terms of this Lease, then Tenant shall have the right, at its election, to (1) terminate this Lease in accordance with the provisions of Section 10.07, or (2) to make full repair of such damage and to restore the improvements in accordance with the provisions of Sections 10.01 and 10.05, or (3) repair such damage or restore the improvements to the extent necessary to preserve them and make them safe, and, in addition, to the extent of the insurance proceeds available unless Landlord has elected to terminate this Lease under subsection c. of Section 10.07 below.

b. If the improvements on the Property are damaged or destroyed by any casualty where the casualty causing such damage or destruction is required to be insured against under the terms of this Lease and Tenant is not in default of its obligation to maintain insurance against the casualty, but the insurance proceeds available are in an amount that is less than ninety percent (90%) of the amount necessary to repair and restore such improvements, then Tenant shall have the right, at its election, to (1) terminate this Lease in accordance with the provisions of Section 10.07, or (2) to make full repair of such damage and to restore the improvements in accordance with the provisions of Sections 10.01 and 10.05, or (3) repair such damage or restore the improvements to the extent necessary to preserve them and make them safe, and, in addition, to the extent of the insurance proceeds available unless Landlord has elected to terminate this Lease under subsection c. of Section 10.07 below.

10.07. Procedures For Certain Permitted Terminations and Election of Landlord to Contribute. The provisions of this Section 10.07 shall apply if the Lease may be terminated pursuant to an election of Tenant under Section 10.06..

a. Whenever damage or destruction of the improvements shall have occurred which would entitle Tenant to terminate under Section 10.06, Tenant shall immediately give Landlord written notice of such damage or destruction. Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Subject to the rights of Tenant's lenders, sums of money received as payments for any losses pursuant to said insurance policies shall be promptly paid to Landlord to be used and expended as set forth in subsection d., below.

b. Within forty-five (45) days of the date of such damage or destruction, Tenant shall notify Landlord in writing of the amount or extent of insurance proceeds available, the policies under which such proceeds are available, and the estimated cost of repairing or restoring such damaged or destroyed improvements. Tenant shall also, if entitled to do so, notify Landlord as to whether it elects to (1) terminate; or (2) repair and restore; or (3) repair and restore to the extent of insurance proceeds available, all as provided in Section 10.06. If Tenant is not entitled so to terminate thereunder, no such notice or attempted notice shall be effective and this Lease shall continue in full force and effect and repair and restoration in full of the improvements shall be required. Tenant's determination that the extent of the damage or destruction that has occurred would entitle Tenant to terminate this Lease under Section 10.06 shall not be binding upon Landlord.

c. If Tenant notifies Landlord pursuant to the provisions of Section 10.06 that it elects not to terminate this Lease and to repair and restore only to the extent of insurance proceeds available, then Landlord may elect to terminate this Lease by written notice to Tenant of its election, given within forty-five (45) days after receipt of the notice from Tenant referred to in subsection b. above, provided, however, that any termination by Landlord pursuant to this subsection c. shall not be effective as to any leasehold mortgagee identified in Section 14.01 hereof unless consented to in writing by such leasehold mortgagee.

d. Insurance proceeds not used in repair or restoration shall be distributed as follows:

(1) First, at the option of Landlord, in any amount necessary to raze remaining improvements, clear the Property and make it safe;

(2) Second, to mortgagees (in the order of their respective lien priority), in an amount equal to the unpaid balance secured by such mortgagees, the debt service on which is then a permitted expense; and

(3) Third, to Tenant, in an amount equal to the fair market value of the improvements, subject to Landlord's reversionary interest, less the amount paid to mortgagees pursuant to (2) above; and

(4) Fourth, the balance, if any, to Landlord.

e. Upon termination of this Lease pursuant to this Section 10.07, Tenant shall deliver possession of the Property and improvements thereon to Landlord and quitclaim to Landlord all right, title and interest in the Property and the improvements thereon.

ARTICLE 11. CONDEMNATION

11.01. Definitions.

a. "Condemnation" means (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

b. "Date of taking" means the date the condemnor has the right to possession of the property being condemned.

c. "Award" means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

d. "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

11.02. Parties' Rights and Obligations to be Governed by Lease. If during the term there is any taking of all or any part of the Property, any improvements on the Property or any interest in this Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 11.

11.03. Total Taking. If the Property is totally taken by condemnation, this Lease shall terminate on the date of taking.

11.04. Effect of Partial Taking. If any portion of the Property or the improvements thereon is taken by condemnation, this Lease shall remain in effect, except that Tenant may elect to terminate this Lease if the remaining portion of the Property is rendered unsuitable (as defined herein) for Tenant's continued use. The remaining portion of the Property shall be deemed unsuitable for Tenant's continued use if, in Tenant's reasonable business judgment, Tenant determines that following a reasonable amount of reconstruction Tenant's business on the Property could not be operated at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within ninety (90) days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this paragraph will result in this Lease continuing in full force and effect.

In the event that a portion of the Property is taken by condemnation and the Tenant does not elect to terminate this Lease as set forth above, Base Rent shall continue without adjustment or abatement.

11.05. Restoration of the Property. If, in Tenant's judgment, it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use so much of the award as is necessary to restore or to add on to the Property so that the area and approximate layout of the Property will be substantially the same after the date of taking as they were before the date of taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Property, the remaining provisions of this Article 11 shall govern the rights of the parties. If Tenant fails to promptly commence the repair, restoration or reconstruction of the Property and diligently prosecute such repair, restoration or reconstruction to completion upon receipt of the award, Tenant shall be in default under this Lease.

11.06. Waiver of CCP Section 1265.130. Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Property.

11.07. Allocation of Award. Subject to the provisions of Section 11.05, the award for the Property and for the improvements shall be allocated as follows:

a. To a leasehold mortgagee authorized by this Lease in an amount equal to the amount owing on the leasehold mortgage;

b. To Landlord that portion of the award equal to the fair market value of the Property; any "bonus value" attributable to this Lease shall be paid to Landlord;

c. To Tenant, that portion of the award equal to the fair market value of the improvements constructed on the Property, subject to Landlord's reversionary interest, less the amount paid to leasehold mortgagees pursuant to subsection a. above; and

d. The balance, if any, shall be allocated between Landlord and Tenant, respectively, in that proportion in which (1) the fair market value of the Property bears to (2) the fair market value of the improvements constructed on the Property, exclusive of Landlord's reversionary interest.

ARTICLE 12. ASSIGNMENT AND SUBLETTING

Tenant may not sell or assign its interest in this Lease and may not sublet all or any portion of the Property or improvements without Landlord's written consent, except to residential tenants in accordance with this Lease and except as otherwise hereinafter provided in this Article 12. When Landlord's consent is required, it shall not be unreasonably withheld. It shall not be unreasonable for Landlord to condition its approval, among other things, upon the proposed assignee having a financial net worth, which is sufficient to meet the Tenant's obligations under this Lease, upon the proposed assignee having a reputation for and experience and qualifications in operating rental housing, and upon the proposed assignee having a reputation in the community for integrity. In evaluating the acceptability of the net worth of a proposed assignee, Landlord may require that the purchaser's or assignee's net worth be sufficient to carry out Tenant's obligations under this Lease. Landlord's consent to any one sale, assignment or sublease shall not constitute consent to any other assignment or sublease, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Article 12.

Notwithstanding the previous paragraph, Tenant shall be permitted to assign its rights and obligations under the Lease to a limited partnership in which Tenant, Charities Housing, or their affiliates are the general partner without the prior consent of Landlord.

Except as expressly permitted herein, unless Landlord shall have given its prior written approval thereof, which approval shall be at the sole discretion of Landlord, Tenant represents and agrees that Tenant has not made or created, and will not make or create or suffer to be made or created, any assignment, either voluntarily or by operation of law. Notwithstanding the foregoing, Landlord's consent shall not be required in connection with an assignment to Tenant or a wholly controlled affiliate thereof, or an assignment of, or a change in, any limited partner interests in Tenant.

Any assignment made in contravention of this Article 12 shall be void and shall be deemed to be a default hereunder whether or not Tenant knew of or participated in such assignment.

No sale, assignment or other transfer of this Lease for which Landlord's consent is required shall be effective unless, at the time thereof, the entity to which such sale, assignment or transfer is made, by an instrument in writing reasonably satisfactory to Landlord and in form recordable among the land records, shall, for itself and its successors and assigns, and especially for the benefit of Landlord, expressly assume all of the obligations of Tenant under this Lease and shall agree to be subject to all conditions and restrictions to which Tenant is subject.

ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES

13.01. Defaults by Tenant. Any of the following occurrences shall constitute a default under this Lease if:

a. Tenant is not able to obtain commitments for all construction financing for the Armory Project within two (2) years after all land development approvals for the Project have been obtained, unless an express written extension is given by Landlord, provided, however, that Tenant shall be entitled to one 2-year extension of the initial two year period if Tenant is not in default under this Lease; or

b. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements herein contained or in the Regulatory Agreements, and should such other default continue for thirty (30) days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than thirty (30) days and Tenant has failed to commence such cure within such thirty (30) days and to thereafter diligently pursue completion of such cure; or

c. Tenant fails to commence, after close of the construction financing for the Project, the Initial Construction as required by this Lease for a period of three (3) months after written notice thereof from Landlord; or

d. Tenant abandons or substantially suspends the Initial Construction as required by this Lease prior to the completion thereof and issuance of a Certificate of Completion and such default shall not be cured within thirty (30) days of written notice from Landlord to Tenant; or

e. Tenant fails to complete the Initial Construction within the time set forth in Section 6.01.b., subject to force majeure, and such default shall not be cured within ninety (90) days of written notice from Landlord to Tenant; or

f. Tenant assigns (whether or not such assignment is deemed to be effective) this Lease (or any rights therein or herein), or sells, transfers, conveys, assigns or leases the whole or any part of the Property or any improvement constructed thereon in violation of this Lease; or

g. There shall be in violation of this Lease any change in control of Tenant or of a part thereof, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; provided, however, that the limited partner of Tenant may remove the general partner for uncured violations of the Tenant's partnership agreement provided that any replacement general partner shall be approved by Landlord, which approval shall not be unreasonably withheld; provided, further, that a limited partner of Tenant may assign its interest without the approval of Tenant; or

13.02. Landlord's Remedies. Subject to the rights of any leasehold mortgagees permitted under Article 14 of this Lease, upon the occurrence of any such default under Section 13.01, in addition to any and all other rights or remedies of Landlord hereunder, or by law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

a. Terminate this Lease by giving Tenant notice of termination. On the giving of the notice, all Tenant's rights in the Property and in all improvements shall terminate. Promptly after notice of termination, Tenant shall surrender and vacate the Property and all improvements in broom-clean condition; and, subject to the provisions in Section 13.02.b., below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Property and all improvements and eject all parties in possession or eject some and not others, or eject none. Termination under this paragraph shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

b. Without terminating this Lease, Landlord may at any time and from time to time relet the Property and improvements or any part or parts of them for the account and in the name of Tenant or otherwise. Landlord may at Landlord's election eject all persons or eject some and not others, or eject none; provided, however, that Landlord shall not have the right to eject any subtenant who is not in default under a sublease whose sublease has been duly submitted and approved (if required) in writing by Landlord pursuant to 12 of this Lease and is not then in default. Any reletting may be for the remainder of the term or for a longer or shorter period. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation or occupancy of the Property or improvements, or both. Tenant hereby appoints Landlord its attorney-in-fact for the purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses, less the avails of any reletting or attornment, including (by way of example), but not limited to, remodeling expenses, commissions and advertising costs. No act by or on behalf of Landlord under this provision shall constitute a termination of the Lease, unless Landlord gives Tenant notice of termination.

c. Even though it may have relet the Property, thereafter elect to terminate this Lease and all of Tenant's rights in or to the Property.

Notwithstanding the foregoing, after Tenant has completed the Initial Construction, Landlord shall only terminate this Ground Lease for a default by Tenant under Sections 13.01(b), (f) or (g) above during the 15-year tax credit compliance period.

13.03. Default Not Susceptible to Cure Within Prescribed Period. Notwithstanding any other provisions of this Article, Landlord agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the period requiring such rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if Tenant within such period shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing and does so complete the same with the use of such diligence as aforesaid.

13.04. Damages. Should Landlord elect to terminate this Lease, Landlord shall be entitled to recover from Tenant, as damages:

a. The worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease;

b. The worth at the time of the award of the amount by which the unpaid rent that would have been earned by Landlord after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

c. The worth at the time of the award of the amount by which the unpaid rent for the balance of the lease term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

d. Any other amount (and court costs) necessary to compensate Landlord for all detriment proximately caused by Tenant's default, including, without limitation, costs of alterations and commissions in connection with reletting, but less any increased rent realized as a result of such activity.

The "worth at the time of the award," as used in subsections a. and b. of this Section, is to be computed by allowing interest at the maximum rate allowed by law. The "worth at the time of the award," as referred to in subsection c. of this Section, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

13.05. Landlord's Right to Cure Tenant's Default. Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be Additional Rent.

ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS

14.01. Leasehold Mortgage Authorized. With prior notice to Landlord, Tenant may mortgage or otherwise encumber Tenant's leasehold estate to an institutional investor (as hereinafter defined) under one or more leasehold mortgage(s) and assign this Lease as security for such mortgage(s). Any mortgage(s) shall affect only Tenant's leasehold estate and shall be subject to all of the terms and provisions of this Lease. Landlord's fee interest shall not be encumbered or subordinated to any mortgage.

14.02. Notice to Landlord. If Tenant shall mortgage Tenant's leasehold estate to an institutional investor, and if the holder of such leasehold mortgage shall provide Landlord with notice of such leasehold mortgage, together with a true copy of such leasehold mortgage, the note and all other documents relating to such leasehold mortgage, and the name and address of the mortgagee, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Article 14 shall apply with respect to such leasehold mortgage. In the event of any assignment of a leasehold mortgage or in the event of a change of address of a leasehold mortgagee or of an assignee of such mortgage, notice of the new name and address shall be provided to Landlord. Tenant shall thereafter also provide Landlord from time to time with a copy of each amendment or other modification or supplement to such instruments. All recorded documents shall be certified as true and correct copies of official records by the Santa Clara County Recorder and all non-recorded documents shall be accompanied by a certification by Tenant or the mortgagee that such documents are true and correct copies of the originals.

14.03. Definitions. As used in this Article 14:

a. The term "institutional investor" shall refer to a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance or pension fund, or public agency. The term "institutional investor" shall also include other lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of Fifty Million Dollars (\$50,000,000) at the time the leasehold mortgage loan is made.

b. The term "leasehold mortgage" shall include a mortgage, deed of trust or other security instrument by which Tenant's leasehold estate is mortgaged, conveyed, assigned or otherwise transferred to secure a debt or other obligation.

c. The term "leasehold mortgagee" or "mortgagee" shall refer to a holder of a leasehold mortgage with respect to which the notice provided for by Section 14.02 has been given and received and as to which the provisions of this Article 14 are applicable.

14.04. Consent of Leasehold Mortgagee Required. Notwithstanding anything to the contrary contained in this Lease, no cancellation, surrender, amendment, modification or termination (other than a termination due to a breach or default) of this Lease shall be effective as to any leasehold mortgagee unless consented to in writing by such leasehold mortgagee.

14.05. Default Notice. Landlord, upon providing Tenant any notice of default under this Lease, shall at the same time provide a copy of such notice to the leasehold mortgagee and to Tenant's investor limited partner, if Tenant's investor limited partner has requested a copy of such notices and has provided Landlord with an address for service thereof. Notice by Landlord to Tenant shall be deemed to have been duly given even in the absence of notice to the mortgagee and investor limited partner; provided, however, that the time periods with respect to such mortgagee and investor limited partner shall not commence until notice is given to such mortgagee or investor limited partner. From and after such notice has been given to the leasehold mortgagee or investor limited partner, such leasehold mortgagee or investor limited partner shall have the same period, after the giving of such notice upon it, for remedying any default (or acts or omissions which are the subject matter of such notice) or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in Sections 14.06 and 14.07 to remedy, commence remedying or cause to be remedied the defaults (or acts or omissions which are the subject matter of such notice) specified in any such notice. Landlord shall accept such performance by or at the instigation of such leasehold mortgagee or investor limited partner as if the same had been done by Tenant. Tenant authorizes the leasehold mortgagee or investor limited partner to take any such action at such leasehold mortgagee's or investor limited partner's option and does hereby authorize entry upon the Property by the leasehold mortgagee or investor limited partner for such purpose.

14.06. Notice to Leasehold Mortgagee. If any default shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such default (or the act or omission which gave rise to such default), Landlord shall notify the leasehold mortgagee of Landlord's intent to so terminate at least sixty (60) days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least one hundred twenty (120) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions of Section 14.07 below shall apply if, during such 60-day or 120-day termination notice period, the leasehold mortgagee shall:

a. Notify Landlord of such leasehold mortgagee's desire to nullify such notice; and

b. Pay or cause to be paid all Base Rent, Additional Rent and other payments then due and in arrears as specified in the termination notice to such leasehold mortgagee and which may become due during such 60-day or 120-day period; and

c. Comply, or in good faith, with diligence and continuity, commence to comply, with all nonmonetary requirements of this Lease then in default and reasonably susceptible of being complied with by such leasehold mortgagee; provided, however, that in the event such leasehold mortgagee shall commence foreclosure proceedings within such 120-day period, such leasehold mortgagee shall not be required during such 120-day period to cure or

commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property junior in priority to the lien of the mortgage held by such leasehold mortgagee.

Any notice to be given by Landlord to a leasehold mortgagee pursuant to any provision of this Article 14 shall be deemed properly addressed if sent to the leasehold mortgagee who served the notice referred to in Section 14.02 at the address stated in such notice unless notice of a change of mortgage ownership has been given to Landlord pursuant to Section 14.02.

14.07. Mortgagee to Foreclose. If Landlord shall elect to terminate this Lease by reason of any default of Tenant and the leasehold mortgagee shall have proceeded in the manner provided for by Section 14.06, the specified date for the termination of this Lease, as fixed by Landlord in its termination notice, shall be extended for a period of six (6) months, provided that such leasehold mortgagee shall, during such 6-month period:

a. Pay, or cause to be paid, the Base Rent, Additional Rent and any other monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease; and

b. If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the leasehold mortgage or other appropriate means and prosecute the same to completion with due diligence.

If at the end of such 6-month period such leasehold mortgagee is diligently complying with this Section 14.07, this Lease shall not then terminate, and the time for completion by such leasehold mortgagee of its proceedings shall continue so long as such leasehold mortgagee is enjoined or stayed and thereafter for so long as such leasehold mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the leasehold mortgage, assignment in lieu of foreclosure or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 14.07, however, shall be construed to extend this Lease beyond the original term hereof, nor to require a leasehold mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the leasehold mortgagee shall discontinue foreclosure proceedings, this Lease shall remain in full force and effect as if Tenant had not defaulted under this Lease.

14.08. Purchase and Sale. If the leasehold mortgagee is complying with Section 14.07, upon the acquisition of Tenant's estate herein by such leasehold mortgagee or its designee or any other purchaser at a foreclosure sale, assignment in lieu of foreclosure or otherwise, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, and Landlord shall recognize such leasehold mortgagee as the Tenant under this Lease, subject to the obligation of the leasehold mortgagee to comply with this Lease and cure any defaults which are reasonably susceptible of cure by the leasehold mortgagee (except as otherwise provided in the Lease or in Section 14.10 below). The purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any leasehold mortgage, including such mortgagee, or the transferee under any instrument of assignment or transfer in lieu of the foreclosure of the leasehold mortgage shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment.

14.09. Purchaser's/Assignee's Right to Sell. The purchaser or assignee of Tenant's leasehold estate pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings, upon acquiring Tenant's leasehold estate, may sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such purchaser or assignee without the

consent or approval of Landlord. Upon such sale or assignment, the transferor shall thereafter be relieved of all obligations under this Lease if such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease.

14.10. New Lease. For as long as there is any leasehold mortgage outstanding, in the event this Lease is terminated for any reason, including, without limitation, a termination or rejection through any bankruptcy proceeding or the leasehold mortgagee or the purchaser or assignee of Tenant's leasehold estate pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings becomes the legal owner of Tenant's estate herein, and upon written request by such party given within sixty (60) days after such termination or acquisition of Tenant's estate herein, as applicable, Landlord shall enter into a new lease of the Property with the leasehold mortgagee, purchaser or assignee for the remainder of the term of this Lease with the same agreements, covenants, reversionary interests and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as are contained in this Lease and with priority equal to this Lease; provided, however, that leasehold mortgagee, purchaser or assignee, as applicable, shall promptly commence, and diligently pursue, to cure any defaults by the Tenant which are reasonably susceptible to cure by the leasehold mortgagee, purchaser or assignee (except as otherwise provided below). After such termination and cancellation of this Lease and prior to the expiration of the period within which the leasehold mortgagee, purchaser or assignee may elect to obtain a new lease from Landlord, Landlord shall refrain from terminating any existing sublease or otherwise encumbering the Property without the prior written consent of the leasehold mortgagee, purchaser or assignee.

Any new lease granted to the leasehold mortgagee, purchaser or assignee shall be in the form substantially similar to this Lease and shall enjoy the same priority in time and in right as this Lease over any lien, encumbrance or other interest created by the Landlord before or after the date of such new lease and shall vest in the leasehold mortgagee, purchaser or assignee all right, title, interest, power and privileges of Tenant hereunder in and to the Property, including, without limitation, the assignment of Tenant's interest in and to all then existing subleases and sublease rentals and the automatic vesting of title to all Improvements, fixtures and personal property of Tenant in the leasehold mortgagee, purchaser or assignee. Such new lease shall provide, with respect to each and every permitted sublease which immediately prior to the termination of this Lease was superior to the lien of the leasehold mortgage, that the leasehold mortgagee, purchaser or assignee shall be deemed to have recognized the sublessee under the sublease, pursuant to the terms of the sublease as though the sublease had never terminated but had continued in full force and effect after the termination of this Lease, and to have assumed all the obligations of the sublessor under the sublease accruing from and after the termination of this Lease, except that the obligation of the new lessee, as sublessor, under any covenant of quiet enjoyment, expressed or implied, contained in any such sublease shall be limited to the acts of such new lessee and those claiming by, under or through such new lessee.

If more than one entity claims to be the lender that is entitled to a new lease pursuant to this subsection, Landlord shall enter into such new lease with the leasehold mortgagee whose leasehold mortgage is prior in time. Landlord without liability to Tenant or any leasehold mortgagee with an adverse claim, may rely upon a lender title insurance policy issued by a responsible title insurance company doing business in the state where the Property is located as the basis for determining the appropriate leasehold mortgagee who is entitled to such new lease and the leasehold mortgagee which executes the new lease shall indemnify and hold Landlord harmless against any claims by Tenant or any other leasehold mortgagee with respect to such determination. Upon execution of a new lease by Landlord and the leasehold mortgagee, purchaser or assignee, any default under this Lease which relates to the performance of an obligation shall be deemed cured.

14.11 No Merger The leasehold estate in the Property pursuant to this Lease shall not merge with the fee interest in the Property, notwithstanding ownership of the leasehold and the fee by the same person, without the prior written consent of each Lender.

14.12 Landlord Bankruptcy

(a) If a bankruptcy proceeding is filed by or against the Landlord, the Landlord shall immediately notify each Lender of such filing and shall deliver a copy of all notices, pleadings, schedules, and similar materials regarding the bankruptcy proceedings to each Lender.

(b) The Landlord acknowledges that (i) the Tenant seeks to construct improvements on the Premises using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both the Tenant and the Lenders to sell the Premises free and clear of the leasehold. Therefore, the Landlord waives its right to sell the Landlord's fee interest in the Premises pursuant to section 363(f) of the Bankruptcy Code, free and clear of the leasehold interest under this Lease.

(c) If a bankruptcy proceeding is filed by or on behalf of the Landlord, the Landlord agrees as follows: (i) the Tenant shall be presumed to have objected to any attempt by the Landlord to sell the fee interest free and clear of the leasehold under this Ground Lease; (ii) if Tenant does not so object, each Lender shall have the right to so object on its own behalf or on behalf of the Tenant; and (iii) in connection with any such sale, the Tenant shall not be deemed to have received adequate protection under section 363(e) of the Bankruptcy Code, unless it shall have received and paid over to each Lender outstanding balance of the obligations under its respective loan.

(d) Landlord recognizes that the Lenders are authorized on behalf of the Tenant to vote, participate in or consent to any bankruptcy, insolvency, receivership or court proceeding concerning the leasehold interest under this Lease.

ARTICLE 15. MISCELLANEOUS

15.01. Holding Over. If Tenant shall hold over the Property after the expiration of the term hereof with the consent of Landlord, either express or implied, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Lease. Tenant and Landlord shall negotiate those future terms if such holding over occurs.

15.02. Attorneys' Fees. In the event that any action or arbitration is brought by either party hereto as against the other party hereto for the enforcement or declaration of any right or remedies in or under this Lease or for the breach of any covenant or condition of this Lease, then and in that event the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court or arbitrator therein including, but not limited to, reasonable attorneys' fees.

15.03. Quiet Possession. Landlord agrees that Tenant, so long as Tenant is not in default under this Lease and is paying the rent and performing the covenants and conditions of this Lease, shall quietly have, hold and enjoy the Property throughout the term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under

Landlord; and Landlord warrants to Tenant that as of the Commencement Date of said lease term, there were no existing tenancies on the Property.

15.04. Force Majeure. Except as to the payment of rent, neither of the parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes or lockouts or any other cause whether similar or dissimilar to the foregoing which is beyond the control of such parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performance of this Lease.

15.05. Notices. Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and delivered to either party by personal delivery or by depositing same in the United States mail, duly certified, with postage thereon fully prepaid and addressed to the party for whom intended, as follows:

To Landlord:

Gary Luebbers, City Manager
City of Sunnyvale
3456 W. Olive Avenue
Sunnyvale, California 94086

To Tenant:

CHARITIES HOUSING
1400 Parkmoor Ave., Suite 190
San Jose, CA 95126
Attention: Executive Director

Either party hereto may from time to time by written notice to the other party designate a different address which shall be substituted for the one above specified. Notices shall be effective when received. Any notice or other document sent by certified mail, as aforesaid, shall be deemed received seventy-two (72) hours after the mailing thereof, as above provided. Notices or other documents sent by personal delivery shall be deemed received on the date of such delivery.

15.06. Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

15.07. Surrender. Upon the expiration or sooner termination of the term of this Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord all and singular the Property, together with the improvements then situated thereon, in good condition and repair, except for reasonable wear and tear.

15.08. Binding. Subject to the restrictions set forth herein regarding assignment of the leasehold estate, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

15.09. Landlord's Right to Enter Property. Landlord and its authorized representatives shall have the right to enter the Property at all reasonable times, after giving Tenant three (3) business days prior written notice, for any of the following purposes: to determine whether the Property is in good condition and whether Tenant is complying with its obligations under this Lease; to do any necessary maintenance and to make any restoration to the Property that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Lease; to post "for rent" or "for lease" signs during the last one (1) year of the term, or during any period while Tenant is in default; to show the Property to prospective brokers, agents, buyers, tenants or persons interested in an exchange, at any time during the term; and to do any act or thing necessary for the safety or preservation of the Property if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street.

Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Landlord's entry on the Property as provided in this Section other than those caused by Landlord's negligence or willful misconduct.

Tenant shall not be entitled to an abatement or reduction of rent if Landlord exercises any rights reserved in this Section.

15.10. 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 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.

15.11. Memorandum. Landlord and Tenant shall execute a Memorandum of this Lease or any amendment or modification thereof for recordation in the Official Records of Santa Clara County, California, in substantially the form attached hereto as Exhibit B.

15.12. Quitclaim. At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord within thirty (30) days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

15.13. Interpretation. The titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

15.14. Covenants and Conditions. Each term and each provision, including, without limitation, the obligation for the payment of rent, to be performed by Tenant or Landlord, as the case may be, shall be construed to be both a covenant and a condition of this Lease.

15.15. Integration. This Lease, together with the Regulatory Agreement and the exhibits and documents of both incorporated by reference, constitutes the entire agreement between the parties and there are no conditions, representations or agreements regarding the matters covered by this Lease which are not expressed herein.

15.16. Estoppel Certificate. If upon any sale, assignment or hypothecation of the Property or the land thereunder by Landlord an offset statement shall be required from Tenant, Tenant agrees to deliver, within thirty (30) days after written request therefor by Landlord, a statement in recordable form addressed to any such proposed mortgagee or purchaser, or to Landlord, in a form requested by Landlord's mortgagee or purchaser, certifying that this Lease is unmodified and is in full force and effect (if such be the case), certifying the commencement and termination dates of the lease term, certifying that there has been no assignment or sublease of

this Lease and that there are no defenses or offsets hereto (or stating those claimed by Tenant) and containing such other information as may reasonably be requested by the party to whom such certificate is addressed. In the event Tenant fails to deliver such offset statement to Landlord within the 30-day period provided above, it shall be deemed that this Lease is in full force and effect and that Tenant has no defenses or offsets against Landlord.

If upon any sale, assignment or other transfer of the Tenant's leasehold interest in the Property, an estoppel statement shall be required from Landlord, Landlord agrees to deliver within thirty (30) days after written request therefor by Tenant, a statement in recordable form addressed to any such proposed transferee, certifying that this Lease is unmodified and is in full force and effect (if such be the case), certifying the commencement and termination dates of the lease term, certifying that there are no claims against Tenant under this Lease (or stating those claimed by Landlord) and containing such other information as may reasonably be requested by the party to whom such certificate is addressed. In the event Landlord fails to deliver such certificate to Tenant within the 30-day period provided above, it shall be deemed that this Lease is in full force and effect and that Landlord has no claims against Tenant under this Lease.

15.17. Landlord's Right to Sell. Landlord shall have the right to sell its fee estate in the Property and assign its interest in this Lease without limitation, provided, however, that any such sale shall be subject to this Lease. Upon any such conveyance, Landlord shall automatically be relieved of any obligations under this Lease other than those obligations which accrued prior to the date of such conveyance. Landlord shall also have the right to mortgage, hypothecate or otherwise pledge its interest in the Property and this Lease, subject to this Lease.

In the event Landlord intends to sell all or any part of the Property, Landlord shall notify Tenant of the proposed terms of such sale not later than ninety (90) days before the anticipated close of escrow. Tenant shall have sixty (60) days from the giving of such notice to exercise a right of first refusal to purchase the Property on the same terms and conditions of such proposed sale.

15.18. Environmental Contamination. Landlord and Tenant each has undertaken an initial investigation of the Property to determine the extent, if any, of environmental contamination and have not found any significant environmental risks. Tenant assumes responsibility for the investigation and remediation of contamination on or under the Property and agrees to utilize the HOME funds provided by the Landlord for this express purpose. However, if it is determined that the remediation costs shall exceed the total amount of HOME funds allocated to Tenant by the Landlord, then the parties agree to meet and confer within 30 days to determine overall project feasibility and future course of action.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first set forth above.

LANDLORD:

CITY OF SUNNYVALE, a municipal Corporation

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

TENANT:

CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA COUNTY a California nonprofit public benefit corporation

By: _____
Its: Executive Director

APPROVED AS TO FORM:

By: _____
Charities Housing Legal Counsel

EXHIBIT A

DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION FOR A LEASE PARCEL
(SUNNYVALE ARMORY PROJECT)

LEASE AREA 2
(Studio Housing – Charities Housing)

BEING PORTIONS OF LOTS 3 AND 4 OF BLOCK 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED “MAP OF THE FAIROAKS ADDITION TO THE TOWN OF SUNNYVALE”, FILED IN BOOK “L” OF MAPS AT PAGE 4, SANTA CLARA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF LOT 3 OF BLOCK 5 OF SAID “MAP OF THE FAIROAKS ADDITION...” DISTANT SOUTH 75° 08’ 00” EAST 48.97 FEET FROM THE SOUTHWEST CORNER OF SAID LOT 3, AND THENCE FROM SAID POINT OF BEGINNING, NORTHERLY AND PARALLEL WITH THE WESTERLY LINE OF SAID LOT 3, NORTH 14° 52’ 00” EAST 289.20 FEET, MORE OR LESS, TO THE SOUTHERLY RIGHT OF WAY OF EAST MAUDE AVENUE;

THENCE ALONG SAID RIGHT OF WAY SOUTH 67° 32’ 00” EAST 37.07 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51° 09’ 52” AN ARC DISTANCE OF 35.72 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 660.00 FEET;

THENCE ALONG SAID CURVE, SAID CURVE ALSO BEING ON THE WESTERLY RIGHT OF WAY OF NORTH WOLFE ROAD, THROUGH A CENTRAL ANGLE OF 20° 15’ 38” AN ARC DISTANCE OF 233.38 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 4;

THENCE ALONG SAID EASTERLY LINE SOUTH 14° 52’ 00” WEST 91.15 FEET TO THE SOUTHEAST CORNER OF SAID LOT 4;

THENCE ALONG THE SOUTHERLY LINE OF LOTS 3 AND 4 OF SAID BLOCK 5 NORTH 75° 08’ 00” WEST 219.09 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.02 ACRES, MORE OR LESS.

END OF DESCRIPTION.

Prepared By: Carroll Engineering, Inc.
05/16/2013
Philip Wooton, PLS
LS No. 8398

EXHIBIT B

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO

City of Sunnyvale
330 W. 20th Avenue
Sunnyvale, CA 94403
ATTN: Neighborhood Improvement
and Housing

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF LEASE

This Memorandum of Lease (hereinafter "Memorandum") is entered into as of _____, 2013, by and between the CITY OF SUNNYVALE, a municipal corporation, (hereinafter "Landlord"), and CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA COUNTY, a California nonprofit public benefit corporation (hereinafter "Tenant") with respect to that certain ground lease (the "Lease") dated as of _____, 2013, between Landlord and Tenant.

Pursuant to the Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the real property (the "Property") more particularly described in Exhibit A, attached hereto and incorporated herein by this reference. The Lease is for a term of ninety (90) years, commencing on _____ (the "Commencement Date"), and ending on _____ (the "Termination Date").

Pursuant to the Lease, Tenant agrees to construct improvements on the Property within the time and manner required by the Lease.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum by proper persons thereunto duly authorized as of the first date hereinabove written.

LANDLORD:

CITY OF SUNNYVALE, a municipal corporation

By _____
City Manager

TENANT:

CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA COUNTY, a California nonprofit public benefit corporation

By _____
Its: Executive Director

EXHIBIT C

SCOPE OF DEVELOPMENT

I. GENERAL

The Developer agrees that the Leased Parcel shall be developed and improved in accordance with the provisions of this Agreement and the plans, drawings and related documents approved by the City of Sunnyvale pursuant hereto.

II. DEVELOPER IMPROVEMENTS

The Developers shall construct, or cause to be constructed, on the Leased Parcel approximately fifty nine (59) units of rental housing and a parking structure containing approximately sixty -two (62) parking spaces to serve the rental housing.

The overall development shall consist of one building over a single-story, at-grade podium parking garage. The proposed building will range from one to three stories with heights that range from 22 to 41 feet. The building consists of approximately 59 residential units, including 58 studio units and 1 two-bedroom manager's unit, together with a laundry room, community room and outdoor terrace area.

III. ARCHITECTURE AND DESIGN

The improvements on the Leased Parcel shall be of high architectural quality, shall be well-landscaped, and shall be effectively and aesthetically designed. The plans submitted by the Developer shall describe in detail the architectural character intended for the improvements.

IV. LANDSCAPING

Landscaping shall embellish all open spaces upon the Site to integrate the Developer's improvements with adjacent sites within the area. Landscaping includes such materials as paving, trees, shrubs and other plant materials, landscape containers, plaza furniture, top soil preparation, automatic irrigation, landscape and pedestrian lighting. Landscaping shall carry out the objectives and principles of the City's desire to accomplish a high-quality aesthetic environment.

V. SITE CLEARANCE AND PREPARATION

A. On-Site Demolition and Clearance

1. The Developer shall demolish and remove all existing buildings and surface parking lots on the Leased Parcel.

2. The Developer shall remove, plug and/or crush in place existing utilities, such as storm sewers, sanitary sewers, water systems, electrical overhead and underground systems and telephone and gas systems located on the Leased Parcel, as may be required following any necessary relocation of the utilities.

B. Compaction, Finish Grading and Site Work

The Developer shall compact, finish grade and do such site preparation as is necessary for the construction of their improvements on the Leased Parcel.

VI. MISCELLANEOUS

A. Phasing of Development

The development of improvements on the CHARITIES HOUSING Parcel may precede, be concurrent or follow the development of improvements on the MidPen Housing Parcel.

EXHIBIT D
Implementation Schedule

	Milestone	Date for Completion
1	Provider submits first application for Low Income Housing Tax Credits	Initial application will occur at first opportunity once gap financing is secured and Land Development and Environmental Approvals have been obtained.
2	Provider submits subsequent applications for Low Income Housing Tax Credits	Twice annually if initial application is not successful until tax credit award is secured.
3	Provider commences construction of Project.	Two (2) years following receipt of Land Development Approvals with ability to extend for an additional 2 years.
4	Provider completes construction of Project.	Eighteen (18) months following commencement of construction of Project.
5	Provider commences operation of Project by placing first homeless housing unit in service.	Upon certification of occupancy for first housing unit.
6	Provider places the last homeless housing unit in service.	Five (5) years from Lease of Armory Property to Providers with additional extensions depending on need, as provided in Section 3 above.

ATTACHMENT D

LOAN AND REGULATORY AGREEMENT BETWEEN
THE CITY OF SUNNYVALE AND MIDPEN HOUSING

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

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

No fee for recording pursuant to
Government Code Section 27383

**CITY OF SUNNYVALE HOUSING MITIGATION FUND
LOAN AND REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

This Loan and Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement"), is made and entered into as of this 30th day of June, 2013, by and between the City of Sunnyvale, a municipal corporation (the "City") and **MP East Maude Associates, L.P.**, a California limited partnership (the "Borrower").

RECITALS

- A. The City and the Borrower have entered into a Legally Binding Agreement pursuant to which the City will loan **Four Million One Hundred Thousand Dollars (\$4,100,000)** to the Borrower (the "Loan") to pay for a long-term ground lease and related development costs for the Project as described herein. In connection with the Loan, the Borrower has executed a promissory note (the "Note") secured by a deed of trust (the "Deed of Trust").
- B. The Borrower intends to develop fifty-eight (58) multi-family rental apartments located in the City of Sunnyvale on that certain real property subject to the Ground Lease and located on a portion of the parcel located at 620 East Maude Avenue in Sunnyvale, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property"), to provide affordable housing for lower-income households (the "Project").
- C. The Loan is provided by the City with funds from the City's Housing Mitigation Fund.
- D. As a condition of providing the Loan, the City requires the Borrower to execute this Agreement to regulate fifty-seven (57) of the apartments in the Project as "Assisted Units", as more particularly described in Exhibit B attached hereto and incorporated herein, to ensure that the units are occupied by and affordable to Very Low and Extremely Low Income Households for the term of this Agreement. These units will be monitored by the City for compliance with City Housing Mitigation Fund program requirements.

NOW, THEREFORE, in consideration of the recitals hereof, and other mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Borrower hereby agree as follows:

ARTICLE 1

DEFINITIONS

1. Definitions. For the purpose of this Agreement the following definitions shall apply:

(a) “Actual Household Size” shall mean the actual number of persons in the applicable household.

(b) “Adjusted Income” shall mean the total anticipated annual income of all persons in a household as calculated in accordance with 24 CFR 92.203(b)(1), which incorporates 24 CFR 5.609.

(c) “Agreement” shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

(d) “Assisted Unit(s)” means one or more of the fifty-seven (57) apartments within the Project developed with funding provided by this Loan and which shall be subject to this Agreement.

(e) “Assumed Household Size” shall mean, solely for the purposes of establishing maximum rent limits for the Assisted Units, a household size equal to the number of bedrooms in the Unit, plus one. For example, the Assumed Household Size for a two-bedroom unit shall be a household of three. Assumed Household Size is not intended to be used as a maximum occupancy limit for the Units.

(f) “Borrower” shall mean MP East Maude Associates, L.P., a California limited partnership. and its successors and assigns in the Project.

(g) “Deed of Trust” shall mean the deed of trust to the City secured by Borrower's interest in the Property, which secures repayment of the Loan and the performance of terms of the Promissory Note, the Ground Lease, and this Agreement.

(h) “Extremely Low Income Household” shall mean a household with an Adjusted Income that does not exceed 30% of the Area Median Income limit for Santa Clara County corresponding to their Actual Household Size, as published by HCD.

(i) “Extremely Low Income Rent” shall mean the maximum allowable rent for a Unit reserved for rental to an Extremely Low Income Household pursuant to Section 2.2(b) below.

(j) “Ground Lease” shall mean that long-term ground lease of the Property on which the Project shall be constructed, between City as Landlord and MidPen Housing Corporation as Tenant, for which Tenant shall make a one-time lump sum lease payment of \$3.7 million to City. A copy of the Ground Lease is on file with the City.

(k) “HCD” shall mean the California Department of Housing and Community Development or successor agency.

(l) “Homeless Household” shall mean an individual or family which lacks permanent housing at time of application to rent a Unit in the Project, as defined by the McKinney-Vento Act or a successor federal definition of homelessness.

(m) “Loan” shall mean all funds loaned to the Borrower by the City pursuant to the Promissory Note and Deed of Trust.

(n) “Project” shall have the meaning set forth in Recital B above.

(o) “Rent” shall mean the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Borrower which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities individually metered and/or paid for separately by the Tenant, including water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service, cable TV, or internet service; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Borrower, and paid by the Tenant. The allowance for utilities shall be determined using the utility allowances used for purposes of the low income housing tax credit program.

(p) “Tenant” shall mean a household occupying a Unit.

(q) “Term” shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the fifty-fifth (55th) anniversary date of the issuance of a certificate of occupancy for the Project, or a specified later date in the event the City and Borrower agree to extend such term.

(r) “Unit” shall mean one of the fifty-eight (58) apartments in the Project.

(s) “Very Low Income Household” shall mean a household with an Adjusted Income that does not exceed the Very Low Income limit for Santa Clara County corresponding to their Actual Household Size, as published by HUD.

(t) “Very Low Income Rent” shall mean the maximum allowable rent for a Unit designated for a Very Low Income Household pursuant to Section 2.2(a) below.

ARTICLE 2

LOAN OF HOUSING MITIGATION FUNDS

2.1 Loan of funds. Subject to satisfaction of the funding conditions set forth herein, City agrees to provide Borrower with the Loan as defined in the Recital A for the purposes of developing the Project described above. The Loan shall have a Term as defined in Article 1. Borrower shall use **Three Million Seven Hundred Thousand Dollars (\$3,700,000)** of the Loan funds to make a one-time lump-sum payment to the City for the Ground Lease of the Property to serve as the Project site. Borrower may substitute other funding sources to make a portion of the

Ground Lease payment, subject to prior approval of the City. Borrower shall use the balance of the Loan funds for related development costs, including but not limited to predevelopment costs such as design, permitting, and environmental remediation; and other hard or soft costs required for development of the Project. Borrower shall seek additional financing for development of the Project consistent with the Financing Plan, attached as Exhibit C and incorporated by reference herein. Borrower shall be additionally liable for repayment of any disbursed Loan funds subsequently determined to be ineligible costs, as may be determined through City audits, monitoring, or by other means. The City shall make the final determination of eligible and ineligible uses of the Loan funds, consistent with this Agreement.

2.2 Loan Repayment.

(a) Loan Principal. The Loan Principal shall consist of all amounts disbursed under this Agreement, not to exceed **Four Million One Hundred Thousand Dollars (\$4,100,000)**, which shall bear simple interest at **three percent (3%)** per annum, beginning upon the date of issuance of Certificate of Occupancy for the Project (“Occupancy”). All payments of principal and interest shall be deferred for a period of two years after initial occupancy of the Project. Residual receipts payments shall become due and payable annually thereafter, as described further in the Promissory Note. The balance of any remaining unpaid principal and accrued interest shall be due in full no later than the end of the Term.

(b) Early Repayment. Notwithstanding the provisions of subsection 2.2(a), the unpaid principal balance of the Loan, together with any unpaid interest due thereon, shall be due and payable in full upon the earliest of the following to occur: Any refinancing, sale, transfer or other disposition of the Property or the Project, or any interest therein not permitted under Section 7.21 below ; or declaration by the City of a default under this Agreement pursuant to Section 4.02 below and pursuant to the Promissory Note, which remains uncured after all applicable cure periods.

2.3 Conditions of Funding. The obligation of the City to disburse Loan proceeds under this Agreement is subject to the following conditions:

a. Borrower has executed and delivered to City a Promissory Note in a form provided by the City and consistent with the terms set forth above.

b. Borrower has executed a Deed of Trust in a form provided by the City and has caused Deed of Trust to be recorded in the Official Records of the County of Santa Clara.

c. Any approval of this Agreement, the Note, Deed of Trust, or Ground Lease contemplated by this Agreement shall be delivered to the City, and any certification required by the City with respect to the procurement of any such approval shall be delivered by Borrower to the City.

d. Borrower shall provide the City with a corporate resolution approving and authorizing execution of this Agreement and all documents contemplated hereby and with such other documentation required by the City regarding Borrower's legal status and authority to enter into this transaction.

e. Borrower shall provide the City with certificates of insurance and bonds, in a form and with insurers admitted in California and acceptable to the City, evidencing compliance with the insurance requirements set forth herein, prior to disbursement of Loan proceeds, and upon demand by City at any time subsequent. If requested by the City, Borrower shall also provide complete copies of the required insurance policies and bonds.

ARTICLE 3

AFFORDABILITY AND OCCUPANCY COVENANTS

In consideration of the Loan to be provided hereunder, Borrower agrees to and accepts the restrictions, obligations and conditions contained in this Agreement, the Note, and the Deed of Trust, including without limitation, the occupancy and rent requirements set forth in this Article 3, as follows:

3.1 Occupancy Requirements.

(a) Assisted Units. The Borrower shall cause all fifty-seven (57) Assisted Units to be rented to and occupied by or, if vacant, available for occupancy by Very Low and Extremely Low Income Households, and shall reserve **twenty-eight (28)** of the Assisted Units for Homeless Households (**the “Homeless Units”**), all in accordance with the Schedule of Assisted Units set forth in Exhibit B, attached hereto and incorporated herein.

(b) Homeless Units. When leasing Homeless Units, Borrower shall reserve such units for rent only to Homeless Households for a period of at least sixty (60) days, as set forth below.

(1) At the initial leasing stage, the sixty-day period shall begin from the date such units become approved for occupancy. Upon subsequent leasing of a Homeless Unit, the sixty-day period shall begin when Borrower first provides written notice to City, as set forth below, that Homeless Unit has become available, based on Borrower’s reasonable belief that a Tenant of a Homeless Unit intends to vacate within approximately sixty days. Borrower shall make a good faith effort to locate and qualify eligible Homeless Households to rent the Homeless Units, which effort shall include providing notice to City as described below.

(2) Notice. Borrower shall deliver notice of the availability of a Homeless Unit to City by email, fax, or certified mail to the attention of the City Housing Officer, with copies to the County Homeless Coordinator and the Continuum of Care Director. The Notice shall specify the unit size, rent, and income level of the Unit, any availability of vouchers associated with the Unit, contact information for the leasing staff, and the date on which the sixty-day period will end.

(3) A Homeless Household shall be determined eligible for a Homeless Unit if Borrower determines that the household satisfies the tenant selection criteria appropriate for Homeless Units, which criteria shall be developed by Borrower and its affiliate and approved by City. Such tenant selection criteria includes, but is not limited to: applicant’s verified status as a Homeless Household; and applicant’s ability to pay the maximum rent for the Homeless Unit as

set forth in Exhibit B, regardless of whether such payment would be made directly by the applicant or by a rental assistance voucher available to the applicant.

(4) If, after making a good faith effort as described above, Borrower is unable to rent the Homeless Units to eligible Homeless Households within the sixty-day period, Borrower shall submit a written request to City for approval to rent a Homeless Unit to an otherwise eligible household at the income level specified for the Assisted Unit as shown in Exhibit B, which approval shall not be unreasonably withheld. Upon receipt of written City approval, Borrower may lease the Homeless Unit to a non-Homeless Household, and shall rent the next available Assisted Unit to an eligible Homeless Household. Borrower shall document and keep records of Borrower's good faith efforts to locate Homeless Households for rental of Homeless Units as described above.

3.2 Allowable Rent

(a) Very Low Income Rent. Subject to the provisions of Section 3.3 below, the monthly Rent (including utility allowance) charged to Tenants of the Assisted Units designated for Very Low Income Households shall not exceed thirty percent (30%) of one twelfth (1/12th) of fifty percent (50%) of Area Median Income limit for Santa Clara County, as published by HCD, and adjusted for Assumed Household Size.

(b) Extremely Low Income Rent. Subject to the provisions of Section 3.3 below, the monthly Rent (including utility allowance) charged to Tenants of the Assisted Units designated for Extremely Low Income Households shall not exceed thirty percent (30%) of one twelfth (1/12th) of thirty percent (30%) of the Area Median Income limit for Santa Clara County, as published by HCD, adjusted for Assumed Household Size.

(c) City Approval of Rents. Initial Rents for all Assisted Units shall be approved by the City prior to occupancy. Any subsequent rent increases shall also be subject to the maximum rent limits defined above. The City shall provide the Borrower with a schedule of maximum permissible rents for the Assisted Units annually based on the formulas described in (a) and (b) above. The Rent limits in effect as of the date of this Agreement are shown in Exhibit B and are adjusted annually by the City following the annual release of county area median income statistics by HCD, or in the event such statistics are no longer provided by HCD, comparable statistics available from another reliable source, such as the U.S. Department of Housing and Urban Development or the U.S. Census Bureau.

3.3 Increased Income of Tenants

(a) Non-Qualifying Household. If, upon recertification of the income of a Tenant of an Assisted Unit, the Borrower determines that

(i) a former Extremely Low Income Household's Adjusted Income has increased and exceeds the income limit for an Extremely Low Income Household as defined above, such Tenant shall be permitted to continue to occupy the Unit and, then, upon expiration of the Tenant's lease such Tenant's Rent shall be increased to the Very Low Income Rent Limit, upon sixty (60) days' written notice to Tenant, and the next available Very Low

Income Unit shall be rented to a Extremely Low Income Household in compliance with Exhibit B;

AND/OR

(ii) a former Very Low Income Household's Adjusted Income has increased and exceeds the income limit for a Very Low Income Household as defined above, such Tenant's rent shall be increased to 30% of Tenant's Adjusted Monthly Income upon sixty (60) days' written notice to Tenant. If such an increase is expressly prohibited under a deed restriction of a lienholder senior to the City lien, or federal IRS tax credit regulations applicable to the Property at the time, the rent shall remain at the then-current Very Low Income Limit, and the number of Very Low Income Units occupied by Tenants with incomes over the Very Low Income limit shall be reported to the City on an annual basis in Borrower's annual reports to the City as required under Section 4.2 herein.

(b) Termination of Occupancy. Upon termination of occupancy of an Assisted Unit by a Tenant, such Assisted Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Very Low Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the status of the Unit shall be determined based on the income level of the new Tenant.

ARTICLE 4

INCOME CERTIFICATION AND REPORTING

4.1 Income Certification. The Borrower will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Assisted Units. The Borrower shall make a good faith effort to verify that the income information provided by an applicant or occupying household is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain pay or benefit check stubs (as applicable) for the most recent three pay periods; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is retired or unemployed and has no tax return, obtain another form of independent income verification, such as an affidavit signed by the applicant under penalty of perjury, a court order of support, or similar verification. Copies of Tenant income certifications shall be available to the City upon request. Initial household income certification shall be consistent with the "Part 5 Method" described in 24 CFR 5.609.

4.2 Annual Report to the City. The Borrower shall submit to the City not later than the one hundred twentieth (120th) day after the close of each calendar year, or such other date as may be requested by the City, a statistical report describing Borrower's compliance with the terms of this Agreement, including vacancy rate and rent levels of the Assisted Units, as well as the results of annual tenant income certification and a summary of Tenant household income levels.

4.3 Additional Information. The Borrower shall provide the City with any additional information reasonably requested by the City to verify compliance with this Agreement. The City shall have the right to examine and make copies of all books, records or other documents of the Borrower which pertain to the Project.

4.4 Records. The Borrower shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income of Tenants. All Tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Assisted Units for a period of at least five (5) years.

4.5 On-site Inspection. The City shall each have the right to perform an on-site inspection of the Project at least one time per year to monitor compliance with this Agreement. The Borrower agrees to cooperate in such inspection.

ARTICLE 5

OPERATION OF THE PROJECT

5.1 Use of the Project. The Project shall be operated as affordable rental housing consisting of fifty-seven (57) Assisted Units and one Unit for an on-site property manager.

5.2 Compliance with Agreements. Borrower shall comply with all the terms and provisions of this Agreement, the Note, Deed of Trust and the Ground Lease.

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

5.4 Supportive Services Requirement. Borrower shall provide Tenants with supportive services on the Project Site as described in Exhibit D, Supportive Services Plan, attached hereto and incorporated herein (the "Plan"), for the duration of the Term, either directly or through agreements with appropriate service provider agencies. Service levels may vary from time to time depending on availability of federal, state, and other funding sources available for such services. Borrower shall make a good faith effort to provide supportive services on site to the extent possible given the availability of resources to provide such programs during the Term.

The Plan may be modified from time to time if needed due to changes in Tenant needs for supportive services or for other reasonable cause, upon request from Borrower and with prior written approval of the City, which shall not be unreasonably withheld. Borrower shall notify City at least thirty (30) days in advance of any request for City approval to modify the Plan due to any significant change in service needs, funding availability, or other reason. Borrower's failure to make a good faith effort to provide supportive services on site substantially in accordance with the Plan, as may be amended from time to time by mutual agreement of City and Borrower, shall constitute a Default under this Agreement, after all applicable notice and cure periods set forth in Section 7.8 below have been exhausted.

5.5 Marketing and Tenant Selection Plan. Borrower shall provide for City review and approval, at least 120 days prior to planned completion of the Project, a detailed plan for marketing the Assisted Units and a Tenant Selection Plan describing how Borrower will select Tenants from the among all eligible applicants. City will review and approve these plans within thirty (30) days of receipt. The Marketing Plan shall include a period of at least two weeks of marketing and outreach targeted primarily to Sunnyvale residents and workers. To the extent possible without conflicting with the non-discrimination provisions of Section 7.2 or with the requirements of other Project funding agencies and/or state or federal fair housing laws, Borrower shall provide a local preference for Sunnyvale residents and those employed within Sunnyvale, including Homeless Households residing or working within the Sunnyvale city limits.

ARTICLE 6

PROPERTY MANAGEMENT AND MAINTENANCE

6.1 Management Responsibilities. The Borrower is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Project. The Borrower shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder, unless the City approves self-management by the Borrower. A resident manager shall also be required.

(a) Accounting Records. In a manner subject to City approval, the Borrower shall maintain, on an accrual or modified accrual basis, a general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Project, and shall cause to be prepared an independent fiscal audit conducted in accordance with generally accepted accounting principles. Upon completion, Borrower shall provide the City with a copy of each such annual fiscal audit. All records and books relating to this system shall be kept for a period of at least seven years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to City inspection and audit.

(b) Use of Income from Operations. The Borrower, or its management agent, shall promptly deposit all operating income in a segregated account established exclusively for the Project with an FDIC or other comparable federally-insured financial institution.

6.2 Management Agent; Periodic Reports. Unless the City approves self-management by the Borrower, the Project shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Project in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Borrower shall submit for the City's approval the identity of any proposed Management Agent. The Borrower shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Borrower in writing. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. The City hereby approves MidPen Management Corporation as the initial Management Agent for the Project.

6.3 Performance Review. The City reserve the right to conduct an annual (or more frequently, if deemed necessary by the City) review of the management practices and financial status of the Project. The purpose of each periodic review will be to enable the City to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. The Borrower shall cooperate with the City in such reviews.

6.4 Replacement of Management Agent. If, as a result of a periodic review, the City determines in its reasonable judgment that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Borrower of its intention to cause replacement of the Management Agent, or, if the Project is being self-managed, to cause the Borrower to retain a Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Borrower of such written notice, City staff, as applicable, and the Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Project, including, without limitation, replacement of the Management Agent.

If, after such meeting, City staff, as applicable, recommends in writing the replacement of the Management Agent, Borrower shall have sixty (60) days to remedy any concerns raised by the City. If such concerns cannot be addressed to the reasonable satisfaction of the City, Borrower shall promptly dismiss the then Management Agent, or cease self-management if the Project is self-managed and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above, subject to the approval of other lenders to the Project and of any limited partner of Borrower.

Any contract for the operation or management of the Project entered into by Borrower shall provide that the contract can be terminated as set forth above. Failure to remove the

Management Agent or to appoint a Management Agent instead of self-management in accordance with the provisions of this Section shall constitute default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.8.

6.5 Approval of Management Policies. The Borrower shall submit its written management policies with respect to the Project to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

6.6 Property Maintenance. The Borrower agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, City, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. The Borrower shall make all repairs and replacements necessary to keep the improvements, exterior walls, windows, lighting, walkways, mailboxes, landscaping, nonresidential space, and other common areas of the Project safe, clean and well maintained and in good working order.

ARTICLE 7

MISCELLANEOUS

7.1. Tenant Lease Provisions. The Borrower shall use a form of Tenant lease approved by the City for Assisted Units. The form of Tenant lease shall also comply with all requirements of this Agreement and shall include the following provisions for the Assisted Units:

(a) Provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Project in accordance with the standards set forth in this Agreement, or (2) to qualify as a Very Low Income Household or an Extremely Low Income Household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification; and

(b) Be for an initial term of not less than one (1) year, and provide for no Rent increase during such year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the Borrower and the Tenant; however, the Rent may not be increased more often than once a year. The Borrower will provide each Tenant with at least thirty (30) days' written notice of any increase in Rent applicable to such Tenant, or as required by state law, and with such further notice as may be required by Section 2.3 above.

(c) Provide that any termination of a lease or refusal by the Borrower to renew must be preceded by no less than thirty (30) days written notice to the Tenant by the Borrower specifying the grounds for the action.

7.2 Non-discrimination. All of the Assisted Units shall be available for occupancy on a continuous basis to members of the general public who are income-eligible and/or Homeless Households. The Borrower shall not give preference to any particular class or group of persons in renting the Assisted Units, or any part of the Project except to the extent that the Assisted Units are required to be leased to Very Low Income Households, Extremely Low Income Households, and/or Homeless Households, in accordance with the Schedule of Assisted Units provided in Exhibit B. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), age, ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit or in the use or enjoyment of the Project, nor shall the Borrower or any person claiming under or through the Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of any Unit or any part of the Project or in connection with the employment of persons for the construction, operation and management of the Project.

7.3 Housing Choice Voucher Holders. The Borrower will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal Section 8 certificates or vouchers for rent subsidies, currently referred to as “Housing Choice Vouchers,” pursuant to the housing program established by Section 8 of the United States Housing Act, or its successor. The Borrower shall not apply selection criteria to such voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Borrower apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Assisted Units by such prospective Tenants.

7.4 Term. The provisions of this Agreement shall apply to the Property for the entire Term even if the Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of the Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City makes the Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

7.5 Compliance with Loan Documents. Borrower's actions with respect to the Project and the use of funds provided herein shall at all times be in full conformity with all requirements of the Ground Lease, Note, and Deed of Trust, collectively the “Loan Documents”.

7.6 Notice of Expiration of Term. At least six (6) months prior to the expiration of the Term, the Borrower shall provide by first-class mail, postage prepaid, a notice to all Tenants in Assisted Units containing (a) the anticipated date of the expiration of the Term, (b) any anticipated Rent increase upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to the City, and (d) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Borrower shall also file a copy of the above-described notice with the Housing Officer of the City.

7.7 Covenants to Run With the Land. The City and the Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the

land, and shall bind all successors in title to the Project, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly release such conveyed portion of the Project from the requirements of this Agreement.

7.8 Enforcement by the City. Any material breach by the Borrower of any representation, warranty or covenant hereunder, which is not cured within thirty (30) days after notice thereof given by the City or, where cure is not possible within thirty (30) days, whose cure is not commenced within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days shall constitute an Event of Default. In such Event of Default, the City may declare a Default and shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by under law or equity:

(a) Calling the Loan. The City may declare a default under the Note, accelerate the indebtedness evidenced by the Note, including outstanding principal and interest, and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the City may proceed with a foreclosure in accordance with the provisions of the Deed of Trust and state law regarding foreclosures.

(b) Collect Rents. Collect all rents and income in connection with the operation of the Project and use the same and the reserve funds for the operation and maintenance of the Project.

(c) Excess Rents. In the event that the breach or violation involves the rents to tenants or other charges in excess of those permitted under this Agreement, the City may demand, and seek as an additional remedy, the return of such excess rents or other charge to the affected households.

(d) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the Borrower's performance of its obligations under this Agreement, and/or for damages, or for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement or for such other relief as may be appropriate.

(e) Remedies Provided Under Loan Documents. The City may exercise any other remedy provided under the Loan Documents.

(f) Remedies Cumulative. The remedies of the City hereunder are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the City of any one or more of its other remedies.

7.9 Attorneys' Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

7.10 Recording and Filing. The City and the Borrower shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Santa Clara.

7.11 Governing Law. This Agreement shall be governed by the laws of the State of California.

7.12 Waiver of Requirements. Any of the requirements of this Agreement may be expressly waived by the City in writing, but no waiver by the City of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

7.13 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Santa Clara.

7.14 Notices. Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Borrower: MP East Maude Associates, L.P.
c/o Mid-Peninsula The Farm, Inc.
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: Assistant Secretary

With a copy to: [TBD]

City: City of Sunnyvale
Attention: Housing Officer
P.O. Box 3707
Sunnyvale, CA 94088-3707

With a copy to: City of Sunnyvale
Attention: City Attorney
456 West Olive Avenue
Sunnyvale, CA 94088-3707

Such addresses may be changed by notice to the other party given in the same manner as provided above.

7.15 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

7.16 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

7.17. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.

7.18 Assignment of City's Rights. The City retains the right, at its sole discretion, to assign all or part of its rights under this Regulatory Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the City may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

7.19 Binding on Successors. This Agreement shall bind, and benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in interest, and assigns, provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the City.

7.20 Hold Harmless. Absent the gross negligence or willful misconduct of the City, the Borrower and its successors in interest agree to indemnify, defend, and hold harmless the City and its respective agents, employees and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorneys' fees) arising from or in connection with the Borrower's development, management, maintenance or operation of the Project.

7.21. Restrictions on Sale, Encumbrance, and Other Acts.

(a) Except for leases to tenants in the ordinary course of business, Borrower shall not make or allow any sale, encumbrance, hypothecation, assignment, pledge, conveyance, transfer or other disposition of the Project or any of its interest therein, except with the prior written approval of the City. Notwithstanding the previous sentence, the following transfers are hereby approved by the City: (a) the transfer of limited partnership interests in the Borrower; (b) the transfer of the Project to an affiliate of Borrower; and (c) the removal of the general partner for cause in accordance with the terms of the limited partnership agreement of Borrower.

(b) The City may approve a sale, transfer or conveyance provided that all of the following conditions are met:

(1) the Borrower is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Agreement;

(2) the successor-in-interest to the Borrower agrees to assume all obligations of the Borrower pursuant to this Agreement;

(3) any terms of the sale, transfer or conveyance shall not threaten the City's security or repayment of the Loan; and

(4) any successor-in-interest demonstrates to the City's satisfaction that it has the management and financial capacity to own and operate the Project.

(c) The City shall grant its approval for a sale, transfer or conveyance subject to such terms and conditions as may be necessary to ensure compliance with this Agreement and the Loan Agreement.

7.22 Independent Contractor; No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between the City and Borrower or Borrower's agents or employees, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has the right to exercise full control and supervision of the services and the Project and full control of employment, direction, compensation and discharge of all persons assisting it in the performance of services hereunder. Borrower acknowledges and agrees to be solely responsible for all matters relating to payment of its employees, including compliance with Workers Compensation, Social Security, income tax, withholding and all other laws and regulations governing such matters. Borrower shall be solely responsible for its own acts and those of its agents and employees during the term of this Agreement.

Nothing contained in this Agreement shall create or justify any claim against the City by any third person with whom Borrower may have employed or contracted or may employ or contract relative to the acquisition of the Property, the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services related to this Agreement.

7.23 Indemnification. Borrower shall take all responsibility for its work, and shall bear all losses and damages directly resulting to it, to any of its contractors or subcontractors, or to the City, its officers, representatives, agents and employees, on account of any act, error or omission of Borrower in the performance of this Agreement.

Borrower agrees to indemnify, to assume the defense of (if requested) and to hold harmless the City, its officers, representatives, agents and employees from every claim, loss, damage, injury, expense, including reasonable attorney's fees, judgment and direct or vicarious liability of every kind, nature and description arising in whole or in part from the Borrower's performance of this Agreement, except where such claim, loss, damage, injury, expense, judgment or vicarious liability is caused solely, exclusively and directly by the negligence or willful misconduct of City, its officers, representatives, agents, and employees. The aforementioned indemnity shall extend to, but shall not be limited to Borrower's breach of contract, faulty workmanship or any negligent or intentional misconduct whatsoever by Borrower. Insurance coverage required under this Agreement does not relieve Borrower or its subcontractors, consultants or both, from liability under this Section.

Each party to this Loan and Regulatory Agreement was represented by counsel in the negotiation and execution of this Agreement. The parties are aware of the provisions set forth in California Civil Code Section 1717 and intend this paragraph of the Agreement to meet said statutory requirements so the reference to attorneys' fees herein above and elsewhere herein shall not apply outside of the indemnification context found in this paragraph.

7.24 Subordination. Upon the request of the Construction Lender, the City shall subordinate this Agreement and the Deed of Trust to the deed of trust securing the construction loan, provided that the loan has been approved by the City as part of the Financing Plan for the Project. The City shall execute any documents reasonably required by such lenders to subordinate this Agreement.

So agreed and duly executed by the undersigned on the date first above written:

CITY:

Approved as to Form:

By: _____
Its: _____

By: _____
City Attorney

BORROWER:

MP East Maude Associates, L.P.
a California limited partnership

By: _____
Jan M. Lindenthal
Assistant Secretary

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

Exhibit "A"

LEGAL DESCRIPTION

**LEGAL DESCRIPTION FOR A LEASE PARCEL
(SUNNYVALE ARMORY PROJECT)**

LEASE AREA 1
(Family Housing – MidPen Development)

BEING PORTIONS OF LOTS 2 AND 3 OF BLOCK 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE FAIROAKS ADDITION TO THE TOWN OF SUNNYVALE", FILED IN BOOK "L" OF MAPS AT PAGE 4, SANTA CLARA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2 AND THENCE ALONG THE LINE DIVIDING LOTS 1 AND 2 OF SAID "MAP OF THE FAIROAKS ADDITION..." NORTH 14° 52' 00" EAST 313.62 FEET, MORE OR LESS, TO THE SOUTHERLY RIGHT OF WAY OF EAST MAUDE AVENUE;

THENCE ALONG SAID RIGHT OF WAY SOUTH 67° 32' 00" EAST 184.62 FEET TO A LINE PARALLEL WITH AND DISTANT 183.00 FEET FROM THE WESTERLY LINE OF SAID LOT 2;

THENCE ALONG SAID PARALLEL LINE SOUTH 14° 52' 00" WEST 289.20 FEET. MORE OR LESS, TO THE SOUTHERLY LINE OF SAID LOT 3 OF SAID MAP;

THENCE ALONG SAID LINE NORTH 75° 08' 00" WEST 183.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.27 ACRES, MORE OR LESS.
END OF DESCRIPTION.

Prepared By:
Carroll Engineering, Inc.
05/16/2013
Philip Wooton, PLS
LS No. 8398

EXHIBIT “B”

**SCHEDULE OF ASSISTED UNITS:
ALLOWABLE RENTS AND INCOME LIMITS
BY UNIT SIZE**

Schedule of Assisted Units

Unit Size	Very Low Income (VLI) Units	Extremely Low Income (ELI) Units	Homeless Units <i>(subset of Assisted Units)</i>	
			VLI	ELI
1-Bedroom	19	8	14	8
2-Bedroom	9	2	4	2
3-Bedroom	17	2	0	0
Total	45	12	18	10

Current Maximum Allowable Rents

Based on 2013 California State Income Limits for Santa Clara County

Unit Size	Very Low Income	Extremely Low Income
1-Bedroom	\$1,061	\$638
2-Bedroom	\$1,194	\$716
3-Bedroom	\$1,326	\$796

Rents shall be reduced to provide any applicable utility allowances as set forth in Article 1, section (o).

Current Maximum Adjusted Income Limits

Based on 2013 California State Income Limits for Santa Clara County

Household Size (Persons)	Very Low Income	Extremely Low Income
2	\$ 42,450	\$ 25,500
3	\$ 47,750	\$ 28,650
4	\$ 53,050	\$ 31,850

NOTE: The rent and income limits are adjusted annually. Rent limits are based on Assumed Household Size for the Unit (number of bedrooms plus one), while income limits are based on the Actual Household Size of the Applicant/Tenant. If the applicable TCAC/MTSP limits for each respective income level exceed the State Income Limits in a given year (by 10% or less), Borrower may apply the TCAC/MTSP limits instead, with prior written notice to the City. Otherwise the stricter of the two limits shall prevail.

EXHIBIT C

FINANCING PLAN

SOURCES	AMOUNT	ELIGIBLE USES
<i>Conventional Mortgage</i>	<i>\$1,391,000</i>	<i>Construction and related hard or soft development costs</i>
City Housing Mitigation Fund Loan	\$4,100,000	Acquisition (Lease Payment) and Related Development Expenses (hard or soft development costs)
<i>Tax Credit Investor Contributions (9% Federal Tax Credits and CA State Credits)</i>	<i>\$17,817,531</i>	<i>Construction and related hard or soft development costs</i>
<i>County Mental Health Services Act (MHSA) Funds</i>	<i>\$148,000</i>	<i>Construction and related hard or soft development costs</i>
County CDBG Funds	\$254,000	Acquisition costs and/or related soft costs.
City HOME Funds	\$1.3 Million	Construction, environmental remediation, and other HOME-eligible development costs.
County HOME Funds	\$190,380	Construction and related hard or soft development costs
<i>Federal Home Loan Bank Affordable Housing Program (AHP) Funds</i>	<i>\$500,000</i>	<i>Construction and related hard or soft development costs</i>
Sponsor Equity/Deferred Fee	\$200,000	
Total	\$25,900,911	

* Sources shown in *italics* have not yet been secured by Borrower. If not obtained, Borrower will seek alternative sources until sufficient financing is secured.

EXHIBIT “D”

SUPPORTIVE SERVICES PLAN

A Service Coordinator will be provided on-site to assist all residents with their various service needs by linking them to available community services and programs such as rental assistance, public transportation assistance, job training, computer training, and food and benefits assistance.

Twenty Eighty (28) units will be set aside for those exiting homelessness, of which ten (10) will be designated for participants in the County's Mental Health Department (MHSA Program units). In addition to receiving services from the property Service Coordinator, they will also receive services from the Mental Health Service Provider assigned by the County Mental Health Department.

Services for tenants of non-MHSA homeless units will be provided through the Care Coordination Project currently managed by EHC LifeBuilders. Utilizing the intensive case management model, services will include developing treatment/recovery plans; conducting client interventions and rehabilitative counseling; assessing progress of clients on a continuous basis and modifying the counseling program to meet their agreed-upon goals; and other related duties as required to help place and maintain clients in their living situations.

ATTACHMENT E

LOAN AND REGULATORY AGREEMENT BETWEEN
THE CITY OF SUNNYVALE AND CHARITIES HOUSING

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

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

No fee for recording pursuant to
Government Code Section 27383

**CITY OF SUNNYVALE HOUSING MITIGATION FUND
LOAN AND REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

This Loan and Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement"), is made and entered into as of this 30th day of June, 2013, by and between the City of Sunnyvale, a municipal corporation (the "City") and **Parkside Studios L.P.**, a California limited partnership (the "Borrower").

RECITALS

- A. The City and the Borrower have entered into a Legally Binding Agreement pursuant to which the City will loan **Four Million One Hundred Thousand Dollars (\$4,100,000)** to the Borrower (the "Loan") to pay for a long-term ground lease and related development costs for the Project as described herein. In connection with the Loan, the Borrower has executed a promissory note (the "Note") secured by a deed of trust (the "Deed of Trust").
- B. The Borrower intends to develop fifty-nine (59) apartments located in the City of Sunnyvale on that certain real property subject to the Ground Lease and located on a portion of the parcel located at 620 East Maude Avenue in Sunnyvale, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property"), to provide affordable housing for lower-income households (the "Project").
- C. The Loan is provided by the City with funds from the City's Housing Mitigation Fund.
- D. As a condition of providing the Loan, the City requires the Borrower to execute this Agreement to regulate fifty-eight (58) of the studio apartments in the Project as "Assisted Units", as more particularly described in Exhibit B attached hereto and incorporated herein, to ensure that the units are occupied by and affordable to Very Low and Extremely Low Income Households for the term of this Agreement. These units will be monitored by the City for compliance with City Housing Mitigation Fund program requirements.

NOW, THEREFORE, in consideration of the recitals hereof, and other mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Borrower hereby agree as follows:

ARTICLE 1

DEFINITIONS

1. Definitions. For the purpose of this Agreement the following definitions shall apply:

(a) “Actual Household Size” shall mean the actual number of persons in the applicable household.

(b) “Adjusted Income” shall mean the total anticipated annual income of all persons in a household as calculated in accordance with 24 CFR 92.203(b)(1), which incorporates 24 CFR 5.609.

(c) “Agreement” shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

(d) “Assisted Unit(s)” means one or more of the fifty-eight (58) studios within the Project developed with funding provided by this Loan and which shall be subject to this Agreement.

(e) “Assumed Household Size” shall mean, solely for the purposes of establishing maximum rent limits for the Assisted Units, a household size equal to the number of bedrooms in the Unit, plus one. For example, the Assumed Household Size for a studio unit shall be a household of one. Assumed Household Size is not intended to be used as a maximum occupancy limit for the Units.

(f) “Borrower” shall mean Parkside Studios L.P., a California limited partnership, and its successors and assigns in the Project.

(g) “Deed of Trust” shall mean the deed of trust to the City secured by Borrower's interest in the Property, which secures repayment of the Loan and the performance of terms of the Promissory Note, the Ground Lease, and this Agreement.

(h) “Extremely Low Income Household” shall mean a household with an Adjusted Income that does not exceed 30% of the Area Median Income limit for Santa Clara County corresponding to their Actual Household Size, as published by HCD.

(i) “Extremely Low Income Rent” shall mean the maximum allowable rent for a Unit reserved for rental to an Extremely Low Income Household pursuant to Section 2.2(b) below.

(j) “Ground Lease” shall mean that long-term ground lease of the Property on which the Project shall be constructed, between City as Landlord and Charities Housing as Tenant, for which Tenant shall make a one-time lump sum lease payment of \$3.7 million to City. A copy of the Ground Lease is on file with the City.

(k) “HCD” shall mean the California Department of Housing and Community Development or successor agency.

(l) “Homeless Household” shall mean an individual or family which lacks permanent housing at time of application to rent a Unit in the Project, as defined by the McKinney-Vento Act or a successor federal definition of homelessness.

(m) “Loan” shall mean all funds loaned to the Borrower by the City pursuant to the Promissory Note and Deed of Trust.

(n) “Project” shall have the meaning set forth in Recital B above.

(o) “Rent” shall mean the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Borrower which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities individually metered and/or paid for separately by the Tenant, including water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service, cable TV, or internet service; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Borrower, and paid by the Tenant. The allowance for utilities shall be determined using the utility allowances used for purposes of the low income housing tax credit program.

(p) “Tenant” shall mean a household occupying a Unit.

(q) “Term” shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the fifty-fifth (55th) anniversary date of the issuance of a certificate of occupancy for the Project, or a specified later date in the event the City and Borrower agree to extend such term.

(r) “Unit” shall mean one of the fifty-nine (59) apartments in the Project.

(s) “Very Low Income Household” shall mean a household with an Adjusted Income that does not exceed the Very Low Income limit for Santa Clara County corresponding to their Actual Household Size, as published by HUD.

(t) “Very Low Income Rent” shall mean the maximum allowable rent for a Unit designated for a Very Low Income Household pursuant to Section 2.2(a) below.

ARTICLE 2

LOAN OF HOUSING MITIGATION FUNDS

2.1 Loan of funds. Subject to satisfaction of the funding conditions set forth herein, City agrees to provide Borrower with the Loan as defined in the Recital A for the purposes of developing the Project described above. The Loan shall have a Term as defined in Article 1. Borrower shall use **Three Million Seven Hundred Thousand Dollars (\$3,700,000)** of the Loan funds to make a one-time lump-sum payment to the City for the Ground Lease of the Property to serve as the Project site. Borrower may substitute other funding sources to make a portion of the

Ground Lease payment, subject to prior approval of the City. Borrower shall use the balance of the Loan funds for related development costs, including but not limited to predevelopment costs such as design, permitting, and environmental remediation; and other hard or soft costs required for development of the Project. Borrower shall seek additional financing for development of the Project consistent with the Financing Plan, attached as Exhibit C and incorporated by reference herein. Borrower shall be additionally liable for repayment of any disbursed Loan funds subsequently determined to be ineligible costs, as may be determined through City audits, monitoring, or by other means. The City shall make the final determination of eligible and ineligible uses of the Loan funds, consistent with this Agreement.

2.2 Loan Repayment.

(a) Loan Principal. The Loan Principal shall consist of all amounts disbursed under this Agreement, not to exceed **Four Million One Hundred Thousand Dollars (\$4,100,000)**, which shall bear simple interest at **three percent (3%)** per annum, beginning upon the date of issuance of Certificate of Occupancy for the Project (“Occupancy”). All payments of principal and interest shall be deferred for a period of two years after initial occupancy of the Project. Residual receipts payments shall become due and payable annually thereafter, as described further in the Promissory Note. The balance of any remaining unpaid principal and accrued interest shall be due in full no later than the end of the Term.

(b) Early Repayment. Notwithstanding the provisions of subsection 2.2(a), the unpaid principal balance of the Loan, together with any unpaid interest due thereon, shall be due and payable in full upon the earliest of the following to occur: Any refinancing, sale, transfer or other disposition of the Property or the Project, or any interest therein not permitted under Section 7.21 below ; or declaration by the City of a default under this Agreement pursuant to Section 4.02 below and pursuant to the Promissory Note, which remains uncured after all applicable cure periods.

2.3 Conditions of Funding. The obligation of the City to disburse Loan proceeds under this Agreement is subject to the following conditions:

a. Borrower has executed and delivered to City a Promissory Note in a form provided by the City and consistent with the terms set forth above.

b. Borrower has executed a Deed of Trust in a form provided by the City and has caused Deed of Trust to be recorded in the Official Records of the County of Santa Clara.

c. Any approval of this Agreement, the Note, Deed of Trust, or Ground Lease contemplated by this Agreement shall be delivered to the City, and any certification required by the City with respect to the procurement of any such approval shall be delivered by Borrower to the City.

d. Borrower shall provide the City with a corporate resolution approving and authorizing execution of this Agreement and all documents contemplated hereby and with such other documentation required by the City regarding Borrower's legal status and authority to enter into this transaction.

e. Borrower shall provide the City with certificates of insurance and bonds, in a form and with insurers admitted in California and acceptable to the City, evidencing compliance with the insurance requirements set forth herein, prior to disbursement of Loan proceeds, and upon demand by City at any time subsequent. If requested by the City, Borrower shall also provide complete copies of the required insurance policies and bonds.

ARTICLE 3

AFFORDABILITY AND OCCUPANCY COVENANTS

In consideration of the Loan to be provided hereunder, Borrower agrees to and accepts the restrictions, obligations and conditions contained in this Agreement, the Note, and the Deed of Trust, including without limitation, the occupancy and rent requirements set forth in this Article 3, as follows:

3.1 Occupancy Requirements.

(a) Assisted Units. The Borrower shall cause all fifty-eight (58) Assisted Units to be rented to and occupied by or, if vacant, available for occupancy by Very Low and Extremely Low Income Households, and shall reserve **eighteen (18)** of the Assisted Units for Homeless Households (**the “Homeless Units”**), all in accordance with the Schedule of Assisted Units set forth in Exhibit B, attached hereto and incorporated herein.

(b) Homeless Units. When leasing Homeless Units, Borrower shall reserve such units for rent only to Homeless Households for a period of at least sixty (60) days, as set forth below.

(1) At the initial leasing stage, the sixty-day period shall begin from the date such units become approved for occupancy. Upon subsequent leasing of a Homeless Unit, the sixty-day period shall begin when Borrower first provides written notice to City, as set forth below, that Homeless Unit has become available, based on Borrower’s reasonable belief that a Tenant of a Homeless Unit intends to vacate within approximately sixty days. Borrower shall make a good faith effort to locate and qualify eligible Homeless Households to rent the Homeless Units, which effort shall include providing notice to City as described below.

(2) Notice. Borrower shall deliver notice of the availability of a Homeless Unit to City by email, fax, or certified mail to the attention of the City Housing Officer, with copies to the County Homeless Coordinator and the Continuum of Care Director. The Notice shall specify the unit size, rent, and income level of the Unit, any availability of vouchers associated with the Unit, contact information for the leasing staff, and the date on which the sixty-day period will end.

(3) A Homeless Household shall be determined eligible for a Homeless Unit if Borrower determines that the household satisfies the tenant selection criteria appropriate for Homeless Units, which criteria shall be developed by Borrower and its affiliate and approved by City. Such tenant selection criteria includes, but is not limited to: applicant’s verified status as a Homeless Household; and applicant’s ability to pay the maximum rent for the Homeless Unit as

set forth in Exhibit B, regardless of whether such payment would be made directly by the applicant or by a rental assistance voucher available to the applicant.

(4) If, after making a good faith effort as described above, Borrower is unable to rent the Homeless Units to eligible Homeless Households within the sixty-day period, Borrower shall submit a written request to City for approval to rent a Homeless Unit to an otherwise eligible household at the income level specified for the Assisted Unit as shown in Exhibit B, which approval shall not be unreasonably withheld. Upon receipt of written City approval, Borrower may lease the Homeless Unit to a non-Homeless Household, and shall rent the next available Assisted Unit to an eligible Homeless Household. Borrower shall document and keep records of Borrower's good faith efforts to locate Homeless Households for rental of Homeless Units as described above.

3.2 Allowable Rent

(a) Very Low Income Rent. Subject to the provisions of Section 3.3 below, the monthly Rent (including utility allowance) charged to Tenants of the Assisted Units designated for Very Low Income Households shall not exceed thirty percent (30%) of one twelfth (1/12th) of fifty percent (50%) of Area Median Income limit for Santa Clara County, as published by HCD, and adjusted for Assumed Household Size.

(b) Extremely Low Income Rent. Subject to the provisions of Section 3.3 below, the monthly Rent (including utility allowance) charged to Tenants of the Assisted Units designated for Extremely Low Income Households shall not exceed thirty percent (30%) of one twelfth (1/12th) of thirty percent (30%) of the Area Median Income limit for Santa Clara County, as published by HCD, adjusted for Assumed Household Size.

(c) City Approval of Rents. Initial Rents for all Assisted Units shall be approved by the City prior to occupancy. Any subsequent rent increases shall also be subject to the maximum rent limits defined above. The City shall provide the Borrower with a schedule of maximum permissible rents for the Assisted Units annually based on the formulas described in (a) and (b) above. The Rent limits in effect as of the date of this Agreement are shown in Exhibit B and are adjusted annually by the City following the annual release of county area median income statistics by HCD, or in the event such statistics are no longer provided by HCD, comparable statistics available from another reliable source, such as the U.S. Department of Housing and Urban Development or the U.S. Census Bureau.

3.3 Increased Income of Tenants

(a) Non-Qualifying Household. If, upon recertification of the income of a Tenant of an Assisted Unit, the Borrower determines that

(i) a former Extremely Low Income Household's Adjusted Income has increased and exceeds the income limit for an Extremely Low Income Household as defined above, such Tenant shall be permitted to continue to occupy the Unit and, then, upon expiration of the Tenant's lease such Tenant's Rent shall be increased to the Very Low Income Rent Limit, upon sixty (60) days' written notice to Tenant, and the next available Very Low

Income Unit shall be rented to an Extremely Low Income Household in compliance with Exhibit B;

AND/OR

(ii) a former Very Low Income Household's Adjusted Income has increased and exceeds the income limit for a Very Low Income Household as defined above, such Tenant's rent shall be increased to 30% of Tenant's Adjusted Monthly Income upon sixty (60) days' written notice to Tenant. If such an increase is expressly prohibited under a deed restriction of a lienholder senior to the City lien, or federal IRS tax credit regulations applicable to the Property at the time, the rent shall remain at the then-current Very Low Income Limit, and the number of Very Low Income Units occupied by Tenants with incomes over the Very Low Income limit shall be reported to the City on an annual basis in Borrower's annual reports to the City as required under Section 4.2 herein.

(b) Termination of Occupancy. Upon termination of occupancy of an Assisted Unit by a Tenant, such Assisted Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Very Low Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the status of the Unit shall be determined based on the income level of the new Tenant.

ARTICLE 4

INCOME CERTIFICATION AND REPORTING

4.1 Income Certification. The Borrower will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Assisted Units. The Borrower shall make a good faith effort to verify that the income information provided by an applicant or occupying household is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain pay or benefit check stubs (as applicable) for the most recent three pay periods; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is retired or unemployed and has no tax return, obtain another form of independent income verification, such as an affidavit signed by the applicant under penalty of perjury, a court order of support, or similar verification. Copies of Tenant income certifications shall be available to the City upon request. Initial household income certification shall be consistent with the "Part 5 Method" described in 24 CFR 5.609.

4.2 Annual Report to the City. The Borrower shall submit to the City not later than the one hundred twentieth (120th) day after the close of each calendar year, or such other date as may be requested by the City, a statistical report describing Borrower's compliance with the terms of this Agreement, including vacancy rate and rent levels of the Assisted Units, as well as the results of annual tenant income certification and a summary of Tenant household income levels.

4.3 Additional Information. The Borrower shall provide the City with any additional information reasonably requested by the City to verify compliance with this Agreement. The City shall have the right to examine and make copies of all books, records or other documents of the Borrower which pertain to the Project.

4.4 Records. The Borrower shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income of Tenants. All Tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Assisted Units for a period of at least five (5) years.

4.5 On-site Inspection. The City shall each have the right to perform an on-site inspection of the Project at least one time per year to monitor compliance with this Agreement. The Borrower agrees to cooperate in such inspection.

ARTICLE 5

OPERATION OF THE PROJECT

5.1 Use of the Project. The Project shall be operated as affordable rental housing consisting of fifty-eight (58) Assisted Units and one Unit for an on-site property manager.

5.2 Compliance with Agreements. Borrower shall comply with all the terms and provisions of this Agreement, the Note, Deed of Trust and the Ground Lease.

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

5.4 Supportive Services Requirement. Borrower shall provide Tenants with supportive services on the Project Site as described in Exhibit D, Supportive Services Plan, attached hereto and incorporated herein (the "Plan"), for the duration of the Term, either directly or through agreements with appropriate service provider agencies. Service levels may vary from time to time depending on availability of federal, state, and other funding sources available for such services. Borrower shall make a good faith effort to provide supportive services on site to the extent possible given the availability of resources to provide such programs during the Term.

The Plan may be modified from time to time if needed due to changes in Tenant needs for supportive services or for other reasonable cause, upon request from Borrower and with prior written approval of the City, which shall not be unreasonably withheld. Borrower shall notify City at least thirty (30) days in advance of any request for City approval to modify the Plan due to any significant change in service needs, funding availability, or other reason. Borrower's failure to make a good faith effort to provide supportive services on site substantially in accordance with the Plan, as may be amended from time to time by mutual agreement of City and Borrower, shall constitute a Default under this Agreement, after all applicable notice and cure periods set forth in Section 7.8 below have been exhausted.

5.5 Marketing and Tenant Selection Plan. Borrower shall provide for City review and approval, at least 120 days prior to planned completion of the Project, a detailed plan for marketing the Assisted Units and a Tenant Selection Plan describing how Borrower will select Tenants from the among all eligible applicants. City will review and approve these plans within thirty (30) days of receipt. The Marketing Plan shall include a period of at least two weeks of marketing and outreach targeted primarily to Sunnyvale residents and workers. To the extent possible without conflicting with the non-discrimination provisions of Section 7.2 or with the requirements of other Project funding agencies and/or state or federal fair housing laws, Borrower shall provide a local preference for Sunnyvale residents and those employed within Sunnyvale, including Homeless Households residing or working within the Sunnyvale city limits.

ARTICLE 6

PROPERTY MANAGEMENT AND MAINTENANCE

6.1 Management Responsibilities. The Borrower is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Project. The Borrower shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder, unless the City approves self-management by the Borrower. A resident manager shall also be required.

(a) Accounting Records. In a manner subject to City approval, the Borrower shall maintain, on an accrual or modified accrual basis, a general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Project, and shall cause to be prepared an independent fiscal audit conducted in accordance with generally accepted accounting principles. Upon completion, Borrower shall provide the City with a copy of each such annual fiscal audit. All records and books relating to this system shall be kept for a period of at least seven years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to City inspection and audit.

(b) Use of Income from Operations. The Borrower, or its management agent, shall promptly deposit all operating income in a segregated account established exclusively for the Project with an FDIC or other comparable federally-insured financial institution.

6.2 Management Agent; Periodic Reports. Unless the City approves self-management by the Borrower, the Project shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Project in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Borrower shall submit for the City's approval the identity of any proposed Management Agent. The Borrower shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Borrower in writing. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. The City hereby approves Charities Housing as the initial Management Agent for the Project.

6.3 Performance Review. The City reserve the right to conduct an annual (or more frequently, if deemed necessary by the City) review of the management practices and financial status of the Project. The purpose of each periodic review will be to enable the City to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. The Borrower shall cooperate with the City in such reviews.

6.4 Replacement of Management Agent. If, as a result of a periodic review, the City determines in its reasonable judgment that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Borrower of its intention to cause replacement of the Management Agent, or, if the Project is being self-managed, to cause the Borrower to retain a Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Borrower of such written notice, City staff, as applicable, and the Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Project, including, without limitation, replacement of the Management Agent.

If, after such meeting, City staff, as applicable, recommends in writing the replacement of the Management Agent, Borrower shall have sixty (60) days to remedy any concerns raised by the City. If such concerns cannot be addressed to the reasonable satisfaction of the City, Borrower shall promptly dismiss the then Management Agent, or cease self-management if the Project is self-managed and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above, subject to the approval of other lenders to the Project and of any limited partner of Borrower.

Any contract for the operation or management of the Project entered into by Borrower shall provide that the contract can be terminated as set forth above. Failure to remove the

Management Agent or to appoint a Management Agent instead of self-management in accordance with the provisions of this Section shall constitute default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.8.

6.5 Approval of Management Policies. The Borrower shall submit its written management policies with respect to the Project to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

6.6 Property Maintenance. The Borrower agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, City, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. The Borrower shall make all repairs and replacements necessary to keep the improvements, exterior walls, windows, lighting, walkways, mailboxes, landscaping, nonresidential space, and other common areas of the Project safe, clean and well maintained and in good working order.

ARTICLE 7

MISCELLANEOUS

7.1. Tenant Lease Provisions. The Borrower shall use a form of Tenant lease approved by the City for Assisted Units. The form of Tenant lease shall also comply with all requirements of this Agreement and shall include the following provisions for the Assisted Units:

(a) Provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Project in accordance with the standards set forth in this Agreement, or (2) to qualify as a Very Low Income Household or an Extremely Low Income Household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification; and

(b) Be for an initial term of not less than one (1) year, and provide for no Rent increase during such year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the Borrower and the Tenant; however, the Rent may not be increased more often than once a year. The Borrower will provide each Tenant with at least thirty (30) days' written notice of any increase in Rent applicable to such Tenant, or as required by state law, and with such further notice as may be required by Section 2.3 above.

(c) Provide that any termination of a lease or refusal by the Borrower to renew must be preceded by no less than thirty (30) days written notice to the Tenant by the Borrower specifying the grounds for the action.

7.2 Non-discrimination. All of the Assisted Units shall be available for occupancy on a continuous basis to members of the general public who are income-eligible and/or Homeless Households. The Borrower shall not give preference to any particular class or group of persons in renting the Assisted Units, or any part of the Project except to the extent that the Assisted Units are required to be leased to Very Low Income Households, Extremely Low Income Households, and/or Homeless Households, in accordance with the Schedule of Assisted Units provided in Exhibit B. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), age, ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit or in the use or enjoyment of the Project, nor shall the Borrower or any person claiming under or through the Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of any Unit or any part of the Project or in connection with the employment of persons for the construction, operation and management of the Project.

7.3 Housing Choice Voucher Holders. The Borrower will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal Section 8 certificates or vouchers for rent subsidies, currently referred to as “Housing Choice Vouchers,” pursuant to the housing program established by Section 8 of the United States Housing Act, or its successor. The Borrower shall not apply selection criteria to such voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Borrower apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Assisted Units by such prospective Tenants.

7.4 Term. The provisions of this Agreement shall apply to the Property for the entire Term even if the Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of the Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City makes the Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

7.5 Compliance with Loan Documents. Borrower's actions with respect to the Project and the use of funds provided herein shall at all times be in full conformity with all requirements of the Ground Lease, Note, and Deed of Trust, collectively the “Loan Documents”.

7.6 Notice of Expiration of Term. At least six (6) months prior to the expiration of the Term, the Borrower shall provide by first-class mail, postage prepaid, a notice to all Tenants in Assisted Units containing (a) the anticipated date of the expiration of the Term, (b) any anticipated Rent increase upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to the City, and (d) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Borrower shall also file a copy of the above-described notice with the Housing Officer of the City.

7.7 Covenants to Run With the Land. The City and the Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the

land, and shall bind all successors in title to the Project, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly release such conveyed portion of the Project from the requirements of this Agreement.

7.8 Enforcement by the City. Any material breach by the Borrower of any representation, warranty or covenant hereunder, which is not cured within thirty (30) days after notice thereof given by the City or, where cure is not possible within thirty (30) days, whose cure is not commenced within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days shall constitute an Event of Default. In such Event of Default, the City may declare a Default and shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by under law or equity:

(a) Calling the Loan. The City may declare a default under the Note, accelerate the indebtedness evidenced by the Note, including outstanding principal and interest, and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the City may proceed with a foreclosure in accordance with the provisions of the Deed of Trust and state law regarding foreclosures.

(b) Collect Rents. Collect all rents and income in connection with the operation of the Project and use the same and the reserve funds for the operation and maintenance of the Project.

(c) Excess Rents. In the event that the breach or violation involves the rents to tenants or other charges in excess of those permitted under this Agreement, the City may demand, and seek as an additional remedy, the return of such excess rents or other charge to the affected households.

(d) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the Borrower's performance of its obligations under this Agreement, and/or for damages, or for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement or for such other relief as may be appropriate.

(e) Remedies Provided Under Loan Documents. The City may exercise any other remedy provided under the Loan Documents.

(f) Remedies Cumulative. The remedies of the City hereunder are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the City of any one or more of its other remedies.

7.9 Attorneys' Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

7.10 Recording and Filing. The City and the Borrower shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Santa Clara.

7.11 Governing Law. This Agreement shall be governed by the laws of the State of California.

7.12 Waiver of Requirements. Any of the requirements of this Agreement may be expressly waived by the City in writing, but no waiver by the City of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

7.13 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Santa Clara.

7.14 Notices. Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Borrower: Parkside Studios, L.P.
1400 Parkmoor Ave., Ste. 190
San Jose, CA 95126
Attention: Dan Wu, Executive Director

City: City of Sunnyvale
Attention: Housing Officer
P.O. Box 3707
Sunnyvale, CA 94088-3707

With a copy to: City of Sunnyvale
Attention: City Attorney
456 West Olive Avenue
Sunnyvale, CA 94088-3707

Such addresses may be changed by notice to the other party given in the same manner as provided above.

7.15 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

7.16 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

7.17. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.

7.18 Assignment of City's Rights. The City retains the right, at its sole discretion, to assign all or part of its rights under this Regulatory Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the City may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

7.19 Binding on Successors. This Agreement shall bind, and benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in interest, and assigns, provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the City.

7.20 Hold Harmless. Absent the gross negligence or willful misconduct of the City, the Borrower and its successors in interest agree to indemnify, defend, and hold harmless the City and its respective agents, employees and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorneys' fees) arising from or in connection with the Borrower's development, management, maintenance or operation of the Project.

7.21. Restrictions on Sale, Encumbrance, and Other Acts.

(a) Except for leases to tenants in the ordinary course of business, Borrower shall not make or allow any sale, encumbrance, hypothecation, assignment, pledge, conveyance, transfer or other disposition of the Project or any of its interest therein, except with the prior written approval of the City. Notwithstanding the previous sentence, the following transfers are hereby approved by the City: (a) the transfer of limited partnership interests in the Borrower; (b) the transfer of the Project to an affiliate of Borrower; and (c) the removal of the general partner for cause in accordance with the terms of the limited partnership agreement of Borrower.

(b) The City may approve a sale, transfer or conveyance provided that all of the following conditions are met:

(1) the Borrower is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Agreement;

(2) the successor-in-interest to the Borrower agrees to assume all obligations of the Borrower pursuant to this Agreement;

(3) any terms of the sale, transfer or conveyance shall not threaten the City's security or repayment of the Loan; and

(4) any successor-in-interest demonstrates to the City's satisfaction that it has the management and financial capacity to own and operate the Project.

(c) The City shall grant its approval for a sale, transfer or conveyance subject to such terms and conditions as may be necessary to ensure compliance with this Agreement and the Loan Agreement.

7.22 Independent Contractor; No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between the City and Borrower or Borrower's agents or employees, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has the right to exercise full control and supervision of the services and the Project and full control of employment, direction, compensation and discharge of all persons assisting it in the performance of services hereunder. Borrower acknowledges and agrees to be solely responsible for all matters relating to payment of its employees, including compliance with Workers Compensation, Social Security, income tax, withholding and all other laws and regulations governing such matters. Borrower shall be solely responsible for its own acts and those of its agents and employees during the term of this Agreement.

Nothing contained in this Agreement shall create or justify any claim against the City by any third person with whom Borrower may have employed or contracted or may employ or contract relative to the acquisition of the Property, the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services related to this Agreement.

7.23 Indemnification. Borrower shall take all responsibility for its work, and shall bear all losses and damages directly resulting to it, to any of its contractors or subcontractors, or to the City, its officers, representatives, agents and employees, on account of any act, error or omission of Borrower in the performance of this Agreement.

Borrower agrees to indemnify, to assume the defense of (if requested) and to hold harmless the City, its officers, representatives, agents and employees from every claim, loss, damage, injury, expense, including reasonable attorney's fees, judgment and direct or vicarious liability of every kind, nature and description arising in whole or in part from the Borrower's performance of this Agreement, except where such claim, loss, damage, injury, expense, judgment or vicarious liability is caused solely, exclusively and directly by the negligence or willful misconduct of City, its officers, representatives, agents, and employees. The aforementioned indemnity shall extend to, but shall not be limited to Borrower's breach of contract, faulty workmanship or any negligent or intentional misconduct whatsoever by Borrower. Insurance coverage required under this Agreement does not relieve Borrower or its subcontractors, consultants or both, from liability under this Section.

Each party to this Loan and Regulatory Agreement was represented by counsel in the negotiation and execution of this Agreement. The parties are aware of the provisions set forth in California Civil Code Section 1717 and intend this paragraph of the Agreement to meet said

statutory requirements so the reference to attorneys' fees herein above and elsewhere herein shall not apply outside of the indemnification context found in this paragraph.

7.24 Subordination. Upon the request of the Construction Lender, the City shall subordinate this Agreement and the Deed of Trust to the deed of trust securing the construction loan, provided that the loan has been approved by the City as part of the Financing Plan for the Project. The City shall execute any documents reasonably required by such lenders to subordinate this Agreement.

So agreed and duly executed by the undersigned on the date first above written:

CITY:

Approved as to Form:

By: _____
Its: _____

By: _____
City Attorney

BORROWER:

Parkside Studios, LP
A California limited partnership

By: Parkside Charities LLC,
a California limited liability company

By: Charities Housing Development Corporation of
Santa Clara County, a California nonprofit public
benefit corporation, its sole member/manager

By: _____
Dan Wu, Executive Director

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

Exhibit "A"

LEGAL DESCRIPTION

LEASE AREA 2
(Studio Housing – Charities Housing)

BEING PORTIONS OF LOTS 3 AND 4 OF BLOCK 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE FAIROAKS ADDITION TO THE TOWN OF SUNNYVALE", FILED IN BOOK "L" OF MAPS AT PAGE 4, SANTA CLARA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF LOT 3 OF BLOCK 5 OF SAID "MAP OF THE FAIROAKS ADDITION..." DISTANT SOUTH 75° 08' 00" EAST 48.97 FEET FROM THE SOUTHWEST CORNER OF SAID LOT 3, AND THENCE FROM SAID POINT OF BEGINNING, NORTHERLY AND PARALLEL WITH THE WESTERLY LINE OF SAID LOT 3, NORTH 14° 52' 00" EAST 289.20 FEET, MORE OR LESS, TO THE SOUTHERLY RIGHT OF WAY OF EAST MAUDE AVENUE;

THENCE ALONG SAID RIGHT OF WAY SOUTH 67° 32' 00" EAST 37.07 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51° 09' 52" AN ARC DISTANCE OF 35.72 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 660.00 FEET;

THENCE ALONG SAID CURVE, SAID CURVE ALSO BEING ON THE WESTERLY RIGHT OF WAY OF NORTH WOLFE ROAD, THROUGH A CENTRAL ANGLE OF 20° 15' 38" AN ARC DISTANCE OF 233.38 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 4;

THENCE ALONG SAID EASTERLY LINE SOUTH 14° 52' 00" WEST 91.15 FEET TO THE SOUTHEAST CORNER OF SAID LOT 4;

THENCE ALONG THE SOUTHERLY LINE OF LOTS 3 AND 4 OF SAID BLOCK 5 NORTH 75° 08' 00" WEST 219.09 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.02 ACRES, MORE OR LESS.
END OF DESCRIPTION.

Prepared By:
Carroll Engineering, Inc.
05/16/2013
Philip Wooton, PLS
LS No. 8398

EXHIBIT “B”

**SCHEDULE OF ASSISTED UNITS:
ALLOWABLE RENTS AND INCOME LIMITS
BY UNIT SIZE**

Schedule of Assisted Units

Unit Size	Very Low Income Units	Extremely Low Income / Homeless Units		Total All Units
Studio	40	MHSA	11	
		McKinney-Vento	7	
Total	40	18		58

Current Maximum Allowable Rents and Income Limits (2013 California State Income Limits)

Income Level	Maximum Monthly Rent	Maximum Annual Adjusted Income (Household of One)*
Very Low	\$929	\$37,150
Extremely Low	\$557	\$22,300

** Income limits for larger households are available upon request from City.*

NOTE: The rent and income limits are adjusted annually. Rent limits are based on Assumed Household Size for the Unit (number of bedrooms plus one), while income limits are based on the Actual Household Size of the Applicant/Tenant. If the applicable TCAC/MTSP limits for each respective income level exceed the State Income Limits in a given year (by 10% or less), Borrower may apply the TCAC/MTSP limits instead, with prior written notice to the City. Otherwise the stricter of the two limits shall prevail.

EXHIBIT “C”

FINANCING PLAN

SOURCES	AMOUNT	ELIGIBLE USES
City Housing Mitigation Fund Loan	\$4,100,000	Land Lease Payment and Related Development Expenses (hard and soft development costs)
<i>Tax Credit Syndication</i>	<i>\$11,981,000</i>	<i>Construction and related hard or soft development costs</i>
<i>County Mental Health Services Act (MHSA) Funds</i>	<i>\$1,154,000</i>	<i>Construction and related hard or soft development costs</i>
County CDBG Funds	\$593,000	Land Lease Payment and/or related soft costs
City HOME Funds	\$850,000	Construction, environmental remediation, and associated development costs
County HOME Funds	\$205,600	Soft development costs
<i>Federal Home Loan Bank Affordable Housing Program (AHP) Funds</i>	<i>\$400,000</i>	<i>Construction and related hard or soft development costs</i>
Sponsor Equity/ Deferred Fee	\$200,000	Construction and related hard or soft development costs
TOTAL	\$19,483,000	

* Sources shown in *italics* have not yet been secured by Borrower. If not obtained, Borrower will seek alternative sources until sufficient financing is secured.

EXHIBIT “D”

SUPPORTIVE SERVICES PLAN

A Service Coordinator will be provided on-site to assist all residents with their various service needs by linking them to available community services and programs such as rental assistance, public transportation assistance, job training, computer training, and food and benefits assistance.

Eighteen units will be set aside for those exiting homelessness, of which eleven will be designated for participants in the County's Mental Health Department (MHSA Program units). In addition to receiving services from the property Service Coordinator, they will also receive services from the Mental Health Service Provider assigned by the County Mental Health Department.

Services for homeless, non-MHSA residents will be provided through the Care Coordination Project currently managed by EHC LifeBuilders. Utilizing the intensive case management model, services will include developing treatment/recovery plans; conducting client interventions and rehabilitative counseling; assessing progress of clients on a continuous basis and modifying the counseling program to meet their agreed-upon goals; and other related duties as required to help place and maintain clients in their living situations.