



**Council Meeting: May 25, 2010**

**SUBJECT: Approve HOME Investment Partnership Act (HOME) Loan Agreement with Aster Park, LP, a legal entity of Mid-Peninsula Housing Coalition, for \$1.3 million to rehabilitate Aster Park Apartments**

**REPORT IN BRIEF**

On July 14, 2009, RTC 09-179, Council approved the conditional commitment of a \$1.3 million loan of HOME funds for Mid-Peninsula Housing Coalition (MPHC), a California non-profit corporation to rehabilitate and retrofit Aster Park Apartments, a 95-unit affordable rental housing complex for low-income families and seniors located at 1059 Reed Avenue. Rehabilitation of the property will address critical and non-critical health and safety repairs, and energy efficiency improvements that will help MPHC to maintain the physical integrity as well as the affordability of Aster Park.

The conditional commitment did not constitute a full commitment of funds until the satisfactory completion of an environmental review and receipt by the City for the release of funds from HUD. The City has completed the environmental review and has submitted a request to HUD for the release of funds.

The HOME Loan Agreement, included as Attachment 1 to this Report, is consistent with the appropriation approved by Council in 2009 and sets forth the terms under which the City may provide \$1.3 million in HOME funds toward the rehabilitation of Aster Park. The Agreement includes financing terms, general requirements, and HOME program requirements.

**BACKGROUND**

Built in 1975, Aster Park was Sunnyvale's second subsidized housing development for families and senior citizens. The property consists of 95 townhouses and garden apartments, which range in size from one to four bedrooms.

The project was refinanced in 1991 with a City loan of \$450,000 in Housing Mitigation funds as well as a HUD Section 236 loan of approximately \$800,000. The current affordability restrictions will expire with the end of the City loan term in June 2010. For that reason, this project was identified in the Housing Element as an at-risk project; however, its affordability could be preserved with additional City financing.

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Preservation of at-risk projects can fulfill a portion of the City's state-mandated requirements to provide lower income housing in each housing element cycle. Mid-Peninsula has expressed a willingness to extend the affordability term on the property if the City will provide the proposed HOME loan for rehabilitation of the project

In March 2009, MPHC completed inspections of the property that identified a total of approximately \$1.6 million in critical health and safety corrections and other rehabilitation work, including ADA retrofits, improved fire protection devices, window replacement, pavement repair, installation of energy efficient solar hot water heating systems to save energy and reduce operating costs, and other interior and exterior rehabilitation. The total rehabilitation cost is \$1,300,000, as shown below.

<b>ASTER PARK REHABILITATION</b>	
<b><u>Hard Costs</u></b>	
Install tamper proof smoke alarm	13,400
Carbon monoxide detectors	6,200
Sidewalk repair (trip hazards)	5,600
GFCI protection (Kitchen Bathrooms)	3,520
Landscaping	12,000
Storm water basin maintenance	1,500
Repair site lighting	1,500
Dryrot repair	41,000
Pest control (termites)	65,000
Bathroom ceiling fan replacement	16,625
Replace obsolete windows with dual-pane energy efficient windows	700,000
Insulation	17,000
Handicap access improvements	700
Asphalt replacement	2,300
Replace kitchen cabinets, countertops	404,000
Specific unit interior and other miscellaneous repairs	9,655
<b>Total</b>	<b>1,300,000</b>

These costs do not include all of the hard costs nor soft costs such as architecture and engineering or permits and fees. Mid-Peninsula is committing

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its own financial resources to cover those and other project costs, as explained in the Development Budget (Attachment 2).

The proposed assistance to this project was reviewed and recommended by the Housing and Human Services Commission on June 24, 2009, and a conditional commitment of the loan was approved by Council in July 2009.

### **EXISTING POLICY**

#### **2010-2015 Sunnyvale Consolidated Plan:**

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

#### **Housing and Community Revitalization Sub-element:**

Goal C.2.b: Continue the rehabilitation loan program for single, multifamily and mobile homes and Implementation Plan Item #7: Assist at least one large multi-family rental project with rehabilitation, acquisition and/or preservation.

### **DISCUSSION**

The proposed HOME Loan Agreement sets forth the terms under which the City may provide \$1.3 million in HOME funds toward the rehabilitation of Aster Park. Formal commitment of these funds must be made by June 2010 to meet HUD expenditure deadlines. The Agreement includes financing terms, general requirements, and HOME program requirements.

### **FISCAL IMPACT**

This project will not impact the City's General Fund. The proposed funding for the project is from the City's HOME fund for affordable housing.

In July 2009, Council allocated \$1.3 million in HOME funds to this project as part of an Amendment to the FY2004-08 Action Plans.

### **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.

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**ALTERNATIVES**

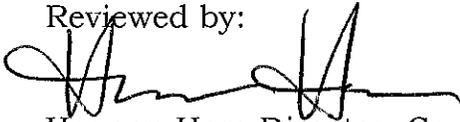
1. Approve the attached HOME Loan Agreement with Aster Park, LP, a legal entity of Mid-Peninsula Housing Coalition.
2. Approve the HOME Loan Agreement with modifications.
3. Do not approve the proposed HOME Loan Agreement.

**RECOMMENDATION**

Staff recommends that the City Council approve Alternative 1.

Approval of the HOME Loan Agreement between the City and Aster Park, LP will help to maintain the physical integrity of Aster Park by addressing critical health and safety repairs, improve energy efficiency thereby reducing residents' utility costs, and extend the affordability of the project for another extended term. With a City cost of less than \$14,000 per unit to rehabilitate and preserve affordable rental housing for low and very low income families and seniors, this is an extremely cost-effective way to preserve and maintain the City's affordable housing stock, and is consistent with the Housing sub-Element implementation plan.

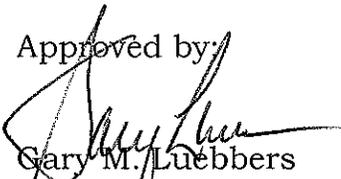
Reviewed by:



Hanson Hom Director, Community Development  
Suzanne Isé, Housing Officer

Prepared by: Katrina L. Ardina, Housing Programs Analyst

Approved by:



Gary M. Luebbers  
City Manager

**Attachments**

- A. HOME Program Loan Agreement between the City of Sunnyvale and Aster Park, LP
- B. Development Budget

# **ATTACHMENT A**

## **HOME PROGRAM LOAN AGREEMENT**



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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

No fee for recording pursuant to  
Government Code Section 27383

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**CITY OF SUNNYVALE**

**HOME INVESTMENT PARTNERSHIPS ("HOME") PROGRAM  
LOAN AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND MID-PENINSULA  
HOUSING COALITION**

This HOME Loan Agreement (the "Agreement") is made as of May \_\_, 2010 by and between City of Sunnyvale, a municipal corporation (the "City"), and Mid-Peninsula Housing Coalition, a California nonprofit public benefit corporation ("Borrower"), shall be effective as of May \_\_, 2010 (the "Effective Date").

**RECITALS**

A. The Borrower intends to rehabilitate that certain real property located at 1059 Reed Avenue, Sunnyvale, CA, County of Santa Clara, California, as set forth in greater detail in the legal description attached hereto as Exhibit A (the "Property"), to maintain the affordability of 95 housing units for very low-income households and/or individuals (the "Project").

B. The Project will consist of ninety-five (95) apartment units which will be occupied by very low income households except for a manager's unit (the "Tenants"). The Project will be available to income-eligible households, individuals, families, and seniors.

C. The Borrower has applied to the City for a loan in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000) (the "Loan") to assist the Borrower in the rehabilitation of the Property.

D. On July 14, 2009 the City Council of the City of Sunnyvale approved the City's contribution of up to \$1.3 million in HOME funds to the Borrower, which will be used to rehabilitate the Project in accordance with the Scope of Work set forth in Exhibit F to this Agreement.

E. The Loan will be provided by the City in accordance with federal laws and regulations governing the HOME Program as set forth in the Cranston-Gonzales National Housing Act of 1990, 42 U.S.C. 12741 et seq., and 24 CFR Part 92, all as amended and in effect from time to time.

F. As a condition of the Loan, the Borrower will execute a regulatory agreement (the "Regulatory Agreement") which will regulate the Units of the Project to ensure that the Units within the Project are occupied by and affordable to very low-income households or individuals for the term of the Loan.

G. Pursuant to Section 15301 (a) of the CEQA Guidelines set forth at 14 California Code of Regulations Section 15000 et seq.; the Project is exempt from the requirements of the California Environmental Quality Act (Sections 2100 et seq. of the Public Resources Code).

H. The City completed its environmental review pursuant to the National Environmental Policy Act (24 U.S.C. Section 4321 et seq.) and its implementing regulations ("NEPA"), and determined that the Project is categorical exempt pursuant to 24 CFR 58.35(a)(3)(i). The City has relied on such exemption for its compliance with NEPA.

NOW THEREFORE, IN CONSIDERATION of recitals hereof and other the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, the Borrower and City hereby agree as follows:

**ARTICLE I  
AGREEMENT  
LOAN TERMS**

1.1 Loan and Security. The City agrees to loan and the Borrower agrees to borrow an amount not to exceed One Million Three Hundred Thousand Dollars (\$1,300,000) of HOME funds, subject to the conditions and terms of this Agreement. The Loan shall be evidenced by a promissory note (the "Note") executed by Borrower; and secured by a deed of trust (the "Deed of Trust") and Regulatory Agreement dated the Effective Date, and both recorded against the Project. Copies of the Note, Deed of Trust and Regulatory Agreement are attached hereto as Exhibits B, C and D. This Agreement, the Note, Deed of Trust and Regulatory Agreement shall be collectively referred to as the "Loan Documents".

1.2 Interest.

(a) Subject to the provisions of Section 1.2(b) below, the outstanding principal balance of the Loan shall bear simple interest at an amount equal to three percent (3%) per annum, commencing on the date of disbursement.

(b) In the event of a Default, interest on the Loan shall begin to accrue, as of the date of default and continuing until such time as the Loan funds are repaid in full or the default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

1.3 Term of Agreement. The term of this Agreement shall commence upon the Effective Date and remain in full force and effect and shall apply to the Project through and including the date which is fifty-five (55) years following the Effective Date, unless terminated earlier pursuant to the terms of this Agreement.

1.4 Repayment Schedule.

The Loan shall be repaid as follows:

(a) All principal and accrued interest, if any, on the Loan shall be due in full on the earliest to occur of (i) the date of any transfer not authorized by the City, (ii) the date of any Default, or (iii) fifty-five (55) years following the Effective Date.

(b) The Borrower shall have the right to prepay the Loan at any time without premium or penalty. However, this Agreement and the Regulatory Agreement shall remain in effect for the entire Loan Term, regardless of any prepayment.

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

(a) There exists not Default nor any act, failure, omission or condition that would constitute a default under this Agreement;

(b) The Borrower hold title to the Property or is acquiring title simultaneously with the disbursement of the Loan proceeds;

(c) A title insurer reasonable acceptable to the City is unconditionally and irrevocably committed to issuing an LP-1- ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the City, and containing such endorsements as the City may reasonably require.

(d) Escrow instructions ("Escrow Instructions") prepared by the parties shall be delivered to and accepted by the title company. The Escrow Instructions shall be consistent with the terms of this Agreement and shall provide, among other matters, that prior to the Closing Date (as defined below):

- (1) This Agreement shall be executed by the Borrower and the City and delivered to the City;
- (2) The Note shall be executed by Borrower and delivered to the City;
- (3) The Deed of Trust shall be executed by Borrower and recorded in the records of the County of Santa Clara (the "County");
- (4) The Regulatory Agreement shall have been executed by Borrower and the City and recorded in the records of the County;

(e) Any approval of this Agreement, the Note, the Deed of Trust, or the Regulatory Agreement contemplated by this Agreement that is required under the Loan Documents 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.

(f) Borrower shall provide the City with a 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 status and authority to enter into this transaction.

(g) Borrower shall provide the City with certificates of insurance, in form and with insurers admitted in California and acceptable to the City, evidencing compliance with the insurance requirements, as provided by the City on or prior to the Closing Date, 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.

(h) The closing contemplated by this Section and the Escrow Instructions shall occur within thirty (30) days of the date of execution of this Agreement, unless the parties agree to a different closing date (the "Closing Date").

(i) The City has determined that the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that the Borrower has obtained in connection with the Project, are not less than the amount that is necessary to pay for the Project and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement.

(j) The City has received a written draw request from the Borrower, including certification by the Borrower that the condition set forth in Section 1.5(a) is satisfied, setting forth the expenses previously incurred for which reimbursement is requested in connection with the acquisition costs of the Project, consistent with the Project Budget, the amount of funds needed, and a copy of the bill or invoice covering the applicable cost. The Borrower shall apply all disbursements for the purpose requested.

1.6 Compliance with HOME Program Requirements. The Borrower agrees that at all times its acts regarding the Project and the use of funds provided herein shall be in conformity with all provisions of the HOME Program including the statutes, rules and regulations and such policies and procedures of HUD pertaining to the HOME Program. The Borrower acknowledges that it is familiar with such applicable provisions and has been professionally advised to the extent necessary for the purpose of enabling the Borrower to fully comply with such provisions.

#### 1.7 Use of Funds.

(a) The Borrower shall use the HOME Funds for the reimbursement of eligible costs incurred for the rehabilitation of the Project, and as described in the Project Budget, attached hereto as Exhibit E.

(b) The Borrower agrees that it will not use the HOME Funds pursuant to this Agreement, either directly or indirectly, as a contribution in order to obtain any other federal funds under any other federal program without prior written approval of the City.

(c) The Borrower agrees to be additionally liable for repayment of any disbursed Loan proceeds subsequently determined to be disallowed costs. Disallowed costs may be identified through audits, monitoring or other sources. The City shall make the final determination of disallowed costs subject to provisions of applicable HOME regulations.

1.8 Regulatory Agreement. The Borrower shall execute a Regulatory Agreement substantially in the form attached as Exhibit D which shall regulate all Units of the Project to insure that the Units, except for a manager's unit, are occupied by and affordable to persons of very low income for not less than fifty-five (55) years from the Effective Date. The affordability requirements shall apply without regard to the term or repayment of the Loan or the transfer of ownership, and shall run with the land.

1.9 Subordination. The Deed of Trust and/or Regulatory Agreement may be subordinated to deed(s) of trust securing the loans in the amounts set forth in the Project Budget, if any, or to existing deeds of trust securing existing financing (each, a "Senior Loan"), subject to the following conditions:

(a) Borrower must demonstrate to the City's reasonable satisfaction that subordination of the Deed of Trust and/or Regulatory Agreement is necessary to secure adequate financing to ensure the continued viability of the Project, including the operation of the Project as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate financing to ensure the viability of the Project including any rehabilitation costs not included in the Budget, Exhibit E (for the City Loan), and adequate financing for the Project would not be available without the proposed subordination or that such loans are existing loans that would not approve the City Loan without subordination.

(b) The subordination agreement(s) must be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the holder of the Senior Loan. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by Borrower, including: (i) providing the City or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the City with a cure period of at least sixty (60) days to cure any default.

(c) The subordination(s) described in this section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the City.

(d) No subordination may limit the effect of the Deed of Trust and/or Regulatory Agreement before a foreclosure, nor require consent of the holder of the Senior Loan to exercise of any remedies by the City under the Loan Documents.

(e) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

## ARTICLE II. LOAN REQUIREMENTS

### 2.1 Hazardous Materials.

(a) Borrower shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction of projects like the Project or kept and used in and about property of this type.

(b) Borrower shall immediately advise the City in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq. or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower. Borrower shall indemnify and hold harmless the City and its council members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on,

under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the City in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

(d) Without the City's prior written consent, which shall not be unreasonably withheld, Borrower shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the City's reasonable judgment, impair the value of the City's security hereunder; provided, however, that the City's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the City's consent before taking such action, provided that in such event Borrower shall notify the City as soon as practicable of any action so taken. The City agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the reasonable satisfaction of the City that there is no reasonable alternative to such remedial action which would result in less impairment of the City's security hereunder; or (iv) the action has been agreed to by the City.

(e) Borrower hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the City's or the trustee's rights and remedies under the Deed of Trust, the City may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Borrower to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the City's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of

hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the City in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the City upon its demand made at any time following the conclusion of such action.

## 2.2 Maintenance and Damage.

(a) During the operation of the Project, Borrower shall maintain the Project and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to the City, the City shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) Subject to the requirements of Senior Lenders, and if economically feasible in the City's reasonable judgment, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the City with such changes as have been approved by the City. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and shall be completed within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then Borrower shall make up the deficiency.

## 2.3 Fees and Taxes.

Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project to the extent owned by Borrower, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the City, Borrower deposits with the City any funds or other forms of assurance that the City in good faith from time to time determines appropriate to protect the City from the consequences of the contest being unsuccessful.

## 2.4 Notice of Litigation.

Borrower shall promptly notify the City in writing of any litigation materially affecting

Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

## 2.5 Operation of Project.

(a) Borrower shall operate the Project as ninety-five (95) affordable rental apartments for income-eligible households except for a manager's unit, including individuals, seniors, and families consistent with (i) HUD's requirements for use of the HOME Funds, and (ii) the Regulatory Agreement.

(b) Borrower shall submit its proposed form of lease agreement for the City's review and approval. The term of the form of lease agreement shall be for no less than one (1) year, except by mutual agreement between Borrower and the Tenant, and shall not contain any provision which is prohibited by 24 CFR 92.253(b) and any modifications thereto. Any Borrower termination of a lease agreement or refusal to renew must be in conformance with 24 CFR 92.253(c), and must be preceded by not less than thirty (30) days written notice to the tenant by the Borrower specifying the grounds for the action.

(c) The Borrower must determine the income eligibility of each Tenant in units pursuant to the City's approved tenant certification procedures within sixty (60) days before the person's expected occupancy of one of the Project's units. The Borrower shall re-certify each Tenant's income on an annual basis.

(d) The maximum household income of a Tenant occupying a unit in the Project and the total charges for rent, utilities, and related services to each Tenant occupying a unit shall be maintained as provided in the Regulatory Agreement.

2.6 Security Deposits. Any security deposits collected by the Borrower or Borrower's agent shall be kept separate and apart from all other funds of the Project in a trust account with depository insured by the Federal Deposit Insurance Corporation, or other comparable federal deposit insurance program, and shall be held and disbursed in accordance with California law. The balance of such amount shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon.

2.7 Hazard and Liability Insurance. The Borrower shall at all times cause the Project to be insured against loss by fire, flood (as required pursuant to 24 CFR 92.358), and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the City. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the City. Property insurance policies shall name the City as an additional insured, as approved by the City.

2.8 Hold Harmless. The Borrower and its successors in interest agree to indemnify, defend, and hold harmless the City and its agents, employees, volunteers and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorney's fees) arising from or in connection with the Borrower's management, maintenance or operation of the Project; provided, however, the Borrower's obligations to indemnify and hold harmless shall not apply in the event of the City's gross negligence or willful misconduct.

2.9 Annual Report. The Borrower shall file with the City an annual report, as required by 24 CFR 92, no later than 60 days following the end of each fiscal year. The report shall contain a certification by the Borrower as to such information as the City may then require including, but not limited to, the following:

(a) The substantial physical defects in the Project, including a description of any major repair or maintenance work undertaken or needed in the previous and current fiscal years. Such statement shall describe what steps the Borrower has taken in order to maintain the Project in a safe and sanitary condition in accordance with applicable housing and building codes.

(b) The occupancy of the Project including:

(1) the verified income of each current tenant; and

(1) the current rent charged each tenant and whether these rents include utilities.

(c) A summary of the information received from the recertification of tenants' incomes.

(d) Other information reasonably required by the City or HUD, including the fiscal condition of the Borrower showing a financial statement for the previous fiscal year that includes a balance sheet and a profit and loss statement indicating any surplus or deficit in operating accounts; a detailed, itemized listing of income and expenses; and the amount of any fiscal reserves. Such financial statement shall be prepared in accordance with the requirements of the City and HUD. The City may require that the financial statement be audited at the Borrower's expense by an independent certified public accountant acceptable to the City or other person designated by the City.

## 2.10 City Review and Inspections.

(a) Upon not less than 72 hours' notice to the Borrower, the City and HUD may at any time during the term of this Agreement, enter and inspect the physical premises and inspect all accounting records pertaining to the development or operation of the Project. Upon request by the City, the Borrower shall notify occupants of upcoming inspections of their units in accordance with State Law.

(b) The City may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. Such information shall be promptly provided by the Borrower.

(c) Borrower shall preserve and make available its records related to receipt and use of Loan proceeds until the expiration of five years from the date of the final disbursement of Loan proceeds, or for such longer period, if any, as is required by law. Borrower shall preserve and make available its records related to occupancy and rent requirements until the

expiration of five years from the end of the calendar year to which such records pertain, or for such longer period, if any, as is required by law. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

## 2.11 Restrictions on Sale, Encumbrance, and Other Acts.

(a) The Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer in any form of the Project or of any its interest therein, except with the prior written approval of the City.

(b) Except for a transfer under the provisions of subsection (a), the unpaid principal balance of the Loan together with any unpaid interest due thereon shall be due and payable in full upon: 1) a refinancing, sale, transfer or other disposition of the Project or any portion thereof to other than the Borrower, unless such disposition of the Project has been first approved in writing by the City, as evidenced by the signature of the City Manager, and approved as to form by the City Attorney; or 2) the declaration by the City of a default as described and subject to the cure periods in Article 3 below.

(c) The Borrower shall not permit the use of the Project for any purpose other than that permitted by this Agreement without the prior written approval of the City.

(d) 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 the Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Regulatory Agreement;
- (2) the transferee agrees to assume all obligations of the Borrower pursuant to the Regulatory Agreement and the HOME Program;
- (3) the transferee demonstrates to the City's satisfaction that it can own and operate the Project in full compliance with all HOME Program requirements;
- (4) any terms of the sale, transfer or conveyance shall not threaten the City's security, repayment of the Loan or the successor's ability to comply with all HOME Program requirements; and
- (5) any transferee demonstrates to the City's satisfaction that it has the management and financial capacity to own and operate the Project.

(e) The City may grant its approval for a sale, transfer or conveyance subject to such terms and conditions as may be necessary to ensure compliance with HOME Program requirements.

2.12 Assignment of City Rights. The City retains the right at its sole discretion to assign all or part of its rights under this 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.

ARTICLE III.  
DEFAULTS AND REMEDIES

3.1 Event of Default.

Each of the following shall constitute a "Default" by Borrower under this Agreement:

(a) Failure to Complete Scope of Work. Failure of Borrower to complete rehabilitation of the Property by the date provided in Exhibit G "Rehabilitation Schedule."

(b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days of receipt of written notice from the City that such payment is due pursuant to the Loan Documents.

(c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the City to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 3, the specific provisions shall control.

(d) Default Under Other Loans. Failure to make any payment or perform any of Borrower's covenants, agreements, or obligations under the documents evidencing and securing the Project Budget following expiration of all applicable notice and cure periods.

(e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(f) Assignment; Attachment. Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(g) Suspension; Termination. Borrower shall have voluntarily suspended its business.

(h) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Project.

(i) Unauthorized Transfer. Any transfer other than as permitted by Section 2.11.

(j) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the City in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made.

### 3.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the City or automatically where so specified, relieve the City of any obligation to make or continue the Loan and shall give the City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The City shall have the right to cause all indebtedness of the Borrower to the City under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the City Deed of Trust. The Borrower shall be liable to pay the City on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The City shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The

Borrower agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

### 3.3 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the City or the rights of the City hereunder.

### 3.4 Remedies Cumulative.

No right, power, or remedy given to the City by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy. Any material breach by the Borrower of any representation, warranty or covenant hereunder, which is not cured within thirty days (30) after notice thereof given by the City or, where cure is not possible within thirty days, whose cure is not commenced within thirty days and diligently prosecuted to completion shall constitute an Event of Default.

3.5 City's Remedies. Upon the happening of an Event of Default, the City may pursue any remedy allowed at law or in equity, including but not limited to, accelerating payment under the Note or applying to any State court for specific performance of this Agreement and the Regulatory Agreement.

## ARTICLE IV. HOME PROGRAM REQUIREMENTS

4.1 HOME Laws and Regulations. The Borrower shall comply with all applicable laws and regulations governing the HOME Program and the use of the HOME Loan, as set forth in 24 CFR Part 92 et seq., including (but not limited to) the requirements set forth in the Regulatory Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the HOME Program and the use of the Loan proceeds, the applicable HOME Program laws and regulations shall govern. The Borrower agrees to enter into any modification of this Agreement and/or the Regulatory Agreement reasonably required by the City to attain compliance with the requirements of the HOME Program. The Borrower acknowledges and agrees that it has received and reviewed a copy of the regulations regarding the HOME Program in effect as of the date of execution of this Agreement.

4.2 Specific Requirements. The laws and regulations governing the HOME Program and the use of the HOME Loan include (but are not limited to) the following:

(a) Environment and Historic Preservation. Section 104(f) of the Housing and Community Residence Act of 1974 and 24 CFR Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.

(b) Applicable OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102 (Revised), A-110, A-122, and A-128.

(c) Architectural Barriers. The requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157).

(d) Lead-Based Paint. The requirements of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.) and implementing regulations at 24 CFR Part 35.

(e) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and similar state laws. If and to the extent that acquisition and rehabilitation of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then the Borrower shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. The Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

(f) Disabled Discrimination. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), and federal regulations issued pursuant thereto (24 CFR Part 8), which prohibit discrimination against the disabled in any federally assisted program.

(g) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1978, as amended, 12 U.S.C. 1701, requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. The Borrower agrees to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project

be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project."

(h) Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-20 (Public Law 90-284) and implementing regulations at 24 CFR Part 107.

(i) Executive Order 11063 and regulations at 24 CFR Part 107.

(j) Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and regulations at 24 CFR Part 107.

(k) The Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations at 24 CFR Part 146.

(l) Executive Order 12372 and implementing regulations at 24 CFR Part 52, regarding intergovernmental review of federal programs.

(m) Flood Disaster Act of 1973, 42 U.S.C. 4001, et seq.

(n) Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.

(o) Any other Department of Housing and Urban Development regulations currently in effect or as may be amended or added in the future pertaining to the HOME Program.

(p) The Fair Housing Act (42 U.S.C. 3601-3620)(Pub. L. 90-284) as it ensures fair housing practices and prohibits housing discrimination based on race, color, religion, sex, national origin, handicap, or familial status.

(q) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto at 24 CFR Section 470.601 as it relates to prohibiting discriminatory actions in activities funded by Community Development Funds.

(r) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 (Equal Employment Opportunity) and implementing regulations issued at 41 CFR Chapter 60 and Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended and implementing regulations at 24 CFR part 135 as they relate to equal employment opportunities.

(s) Executive Orders 11625 and 12432 (concerning minority business enterprise) and 12138 (concerning women's business enterprise) to encourage the use of women and minority owned businesses to the maximum extent possible.

(t) Use of debarred, suspended, or ineligible contractors or subrecipients is prohibited directly or indirectly as part of this award as set forth in 24 CFR part 5.

(u) No member, officer or employee of the organization, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no

other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the loan, and the Borrower shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of the certification.

(v) There shall be no religious worship, instruction, or proselytizing as part of, or in connection with the performance of this agreement.

(w) Davis Bacon. All contracts for new construction or rehabilitation projects with 12 or more HOME-assisted units shall comply with HUD requirements and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 1, 3, and 5 governing the payment of wages and the ratio of apprentices and trainees to journeymen.

(x) Affirmative Marketing. The requirements of the City of Sunnyvale's affirmative marketing plan as contained in the City of Sunnyvale's Consolidated Plan which is in accordance with 24 CFR Part 92.351.

(y) Property Standards. The HOME assisted units must meet all applicable state and local housing quality standards and code requirements.

(z) Affordability. Rent limitation and affordability of the HOME assisted units must conform to 24 CFR Part 92.252.

(aa) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the use of HOME funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

(bb) Successor Rules. In the event HUD ceases to provide definitions, determinations and calculations under the HOME Program related to Income Eligible Households or Annual Income, or both, the provisions of this Section shall be performed in accordance with definitions, determinations and calculations related to such matters as established by the City with a view toward establishing such definitions, determinations and calculations in a manner consistent, as nearly as possible, with those formerly promulgated by HUD under the HOME Program.

(cc) Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Title IV regulations require that an applicant for public benefits is a qualified alien eligible to receive federal public benefits under the Act. According to Section 401 of PRWORA, a "Federal Public Benefit" includes "any grant, contract, loan, professional license or commercial license" provided to an individual, which includes public or assisted housing.

4.3 Certification Regarding Lobbying. The undersigned certifies, to the best of his or her knowledge and belief, that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federally appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL. "Disclosure form to Report Lobbying" in accordance with its instructions.

4.4 Non-Religious Activity. In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of services with funds, pursuant to Title II of the Housing and Community Development Act of 1990, as amended, the Borrower:

(a) Represents that it is not, or may not be deemed to be, a religious or denominational institution or organization or an organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization; and,

(b) Agrees that, in connection with such services:

- (1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
- (2) It will not discriminate against any person applying for housing on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
- (3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence on or in the Project Property; and,
- (4) The common portion of the Project Property shall contain no sectarian or religious symbols or decorations.

4.5 Disclosure of Confidential Tenant Information. To the extent allowed by law, City agrees to maintain the confidentiality of any information regarding Tenants or applicants for residency under this Project, or their immediate families, pursuant to this Agreement, which may be obtained through application forms, interviews, tests, reports, from public agencies or

counselors, or any other source. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement, and then only to persons having responsibilities under the Agreement, including those furnishing services under the Project through subcontracts.

ARTICLE V.  
MISCELLANEOUS PROVISIONS

5.1 Conflict of Interest. No employee, agent, consultant, officer, elected or appointed official or member of the City has or may obtain a personal or financial interest in or benefit from the Borrower or the Project or in any contract or subcontract or agreement, or the proceeds thereof, relating to the Project either for themselves or for those with whom they have family or business ties, during their tenure or one year thereafter.

5.2 Nondiscrimination. The Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

5.3 Hold Harmless.

(a) The Borrower hereby agrees to, and shall, hold City, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from the Borrower's operations under this Agreement, whether such operations be by the Borrower or subcontractor, or by any one of more persons directly or indirectly employed by, or acting as agent for, the Borrower or any subcontractor. The Borrower agrees to, and shall, hold the City, its elective and appointive boards, officers, agents and employees harmless from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations.

(b) The Borrower agrees to provide all costs of any necessary legal defense and all attorney's fees incurred in defending any claim, whether or not actually filed in any court.

5.4 Amendment. This Agreement may be amended only by a writing signed by authorized representatives of the City and the Borrower. The City Manager, or designee of the City Manager, shall be authorized to act on behalf of the City.

5.5 Notice. Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

City: City of Sunnyvale

P. O. Box 3707  
Sunnyvale, CA 94088-3707  
Attn: Housing Officer

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

5.6 No Waiver. No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

5.7 Severability. Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

5.8 Titles and Headings. The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.

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

5.10 Attorneys' Fees. The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

5.11 No Third Party Beneficiary. This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

5.12 No Pledging of City's Credit. Under no circumstances shall the Borrower have the authority or power to pledge the credit of City or incur any obligation in the name of City. Borrower shall save and hold harmless City, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.

5.13 Venue. In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

5.14 IN WITNESS WHEREOF, the City and the Borrower have executed this Agreement as of the date first set forth above.

**CITY:**

**BORROWER:**

City of Sunnyvale, a municipal corporation

ASTER PARK Limited Partnership,  
a California limited partnership

By: \_\_\_\_\_

By: Mid-Peninsula Coalition Aster Park  
Corporation  
Its General Partner

Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Assistant Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney



EXHIBIT A  
LEGAL DESCRIPTION



EXHIBIT "A"

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A, AS SAID PARCEL IS SHOWN UPON THAT RECORD OF SURVEY MAP RECORDED NOVEMBER 1968 IN BOOK 244 OF MAPS AT PAGE 28, SANTA CLARA COUNTY RECORDS, AND BEING ALSO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL A AND THENCE ALONG THE BOUNDARY OF SAID PARCEL A FOR ALL THE FOLLOWING COURSES:

NORTH 594.40 FEET; SOUTH  $89^{\circ} 39' 10''$  WEST, 183.96 FEET; ALONG A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET, A CENTRAL ANGLE OF  $89^{\circ} 39' 10''$  AND AN ARC LENGTH OF 266.01 FEET; SOUTH, 266.09 FEET; ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 213.00 FEET, A CENTRAL ANGLE OF  $24^{\circ} 03' 30''$  AND AN ARC LENGTH OF 89.44 FEET; SOUTH 74.53 FEET; SOUTH  $87^{\circ} 45' 16''$  EAST 82.23 FEET; AND NORTH  $3^{\circ} 32' 24''$  EAST, 289.35 FEET TO THE POINT OF BEGINNING.



EXHIBIT B  
FORM OF NOTE



PROMISSORY NOTE  
(Multi-Family Housing Project)

\$1,300,000

Sunnyvale, California  
May \_\_, 2010

FOR VALUE RECEIVED, the undersigned Aster Park, LP, a California nonprofit public benefit corporation (the "Borrower") hereby promises to pay to the City of Sunnyvale, a municipal corporation (the "Holder"), a principal amount of up to One Million Three Hundred Thousand Dollars (\$1,300,000), plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences the Borrower's obligation to pay the Holder the principal amount of up to One Million Three Hundred Thousand Dollars (\$1,300,000) or such additional amounts as may be loaned by the Holder to Borrower pursuant to the HOME Investment Partnerships ("HOME") Loan Agreement between the Borrower and the Holder of even date herewith (the "Loan Agreement"). The Holder shall loan such funds to Borrower to finance certain construction costs in connection with rehabilitation of the Property pursuant to the Loan Agreement. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Loan Agreement.

2. Interest. The principal balance of this Note shall bear simple interest from the date of disbursement until repaid in full at three percent (3%) per annum; provided, however, if a Default occurs, interest on the principal balance shall begin to accrue, as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

3. Term and Repayment Requirements. The term of this Note (the "Term"), shall commence with the date of this Note and shall expire fifty-five (55) years from the Effective Date. This Note shall be due and payable as set forth in Section 1.4 of the Loan Agreement.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the Holder.

5. Security. This Note is secured by a Deed of Trust and Security Agreement (the "Deed of Trust"), of even date herewith, wherein the Borrower is the Trustor and the Holder is the Beneficiary, covering the Property.

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to Holder at Community Development Department, City of Sunnyvale, P. O. Box 3707, Sunnyvale, California 94088-3707, Attention: Housing Officer or to such other place as the Holder of this Note may from time to time designate.

(c) All payments on this Note shall be without expense to the Holder, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of the Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the Holder may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. Default.

(a) Any of the following shall constitute an event of default under this Note:

(i) Any failure to pay, in full, any payment required under this Note within ten (10) days of written notice that such payment is due;

(ii) Any failure in the performance by the Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in Section 3.1(b) of the Loan Agreement;

(iii) The occurrence of any event of default under the Loan Agreement, the Deed of Trust, the Regulatory Agreement, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the Holder pursuant to the Loan Agreement or the Deed of Trust, subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of such an event of default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the Holder become immediately due and payable upon written notice by the Holder to the Borrower without further demand.

(c) The failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by Holder hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the Holder, except as and to the extent otherwise provided by law.

8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the Holder may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the Holder with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

(a) All notices to the Holder or the Borrower shall be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as the Holder and the Borrower may hereinafter designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the Holder in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the Loan Documents, contains the entire agreement between the parties as to the Loan. It may not be modified except upon written consent of the parties.

10. HUD Requirements. So long as the Secretary of Housing and Urban Development or his/her successor or assigns, are the insurers or holders of the first mortgage on Aster Park, FHA Project No. 121-44373-LD, payments due under this Note shall be payable only from surplus cash (or residual receipts) of said project, as the term surplus cash (or residual receipt) is defined in the Regulatory Agreement dated March 1, 1974 between HUD and United California Bank, a California corporation, predecessor in interest to Berkadia Commercial Mortgage LLC. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by this Note.

11. Nonrecourse. This Note shall be nonrecourse to the Borrower and its partners.

ASTER PARK Limited Partnership,  
a California limited partnership

By: Mid-Peninsula Coalition Aster Park  
Corporation  
Its General Partner

By: \_\_\_\_\_  
Its: Assistant Secretary

EXHIBIT C  
FORM OF DEED OF TRUST



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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

No fee for recording pursuant to  
Government Code Section 27383

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DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND  
FIXTURE FILING  
(Multi-Family Rehabilitation Project)

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made as of May \_\_, 2010, by and among Aster Park, LP, a California nonprofit public benefit corporation ("Trustor"), \_\_\_\_\_ Title Company, a California corporation ("Trustee"), and the City of Sunnyvale, a municipal corporation ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the County of Santa Clara, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by and proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein; and

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner.

All of the foregoing, together with the Property, is herein referred to as the "Security". To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

**FOR THE PURPOSE OF SECURING:**

A. Payment of just indebtednesses of Trustor to Beneficiary as set forth in the Note (defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the Note. Said Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

B. Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

C. Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (as defined below).

D. Payment of any future advances by Beneficiary to Trustor.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

ARTICLE 1:  
DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

Section 1.1 The term "Loan Agreement" means that certain HOME Investment Partnerships ("HOME") Loan Agreement between Trustor and Beneficiary, of even date herewith, providing for the Beneficiary to loan to the Trustor up to One Million Three Hundred Thousand Dollars (\$1,300,000) for rehabilitation of the Property as described in Exhibit [REDACTED], "Scope of Work" of the Loan Agreement.

Section 1.2 The term "Loan Documents" means this Deed of Trust, the Note, the Loan Agreement, the Regulatory Agreement, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.3 The term "Note" means that certain promissory note in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000) of even date herewith executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust. (Copies of the Note are on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.)

Section 1.4 The term "Principal" means the aggregate of the amounts required to be paid under the Note.

Section 1.5 The term "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants by and between the Trustor and Beneficiary of even date herewith and recorded against the Property concurrently herewith.

ARTICLE 2:  
MAINTENANCE AND MODIFICATION OF  
THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and

necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Santa Clara County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

#### Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law. As to these exceptions, Beneficiary will grant and/or direct the Trustee to grant such easements.

#### Section 2.3. Assignment of Rents.

As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the Secured Obligations with the balance, so long as no such breach

has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenant that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies,

taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become part of the Security pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure the Security.

### ARTICLE 3: TAXES AND INSURANCE; ADVANCES

#### Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, at least fifteen (15) days prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at

the maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all other obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Deed of Trust.

Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

ARTICLE 4:  
DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

Subject to the rights of senior lenders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property ("Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. Following an Event of Default, the Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All

or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. Notwithstanding the provisions of this Section, the Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that Trustor (when taking into account the Funds) has sufficient funds to rebuild. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender.

ARTICLE 5:  
AGREEMENTS AFFECTING THE PROPERTY; FURTHER  
ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property.

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes (commonly known as UCC-1 Financing Statements), and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 5.8 Nondiscrimination.

All units within the Security shall be available for occupancy on a continuous basis to members of the general public who are income eligible households, including seniors and families. Trustor shall not give preference to any particular class or groups of persons in renting or selling any portion of the Project except to the extent necessary to comply with the Regulatory Agreement. The Trustor herein covenants by and for itself, its 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 race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

ARTICLE 6:  
HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as are used in rehabilitation or operation of the improvements to be rehabilitated on the Property or as may be customarily kept and used in and about residential property similar to the development on the Property by Trustor.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above hereinafter referred to a "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 *et seq.* or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify and hold harmless Beneficiary and its councilmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous

Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgement, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the

indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7:  
EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

The following shall constitute Events of Default: (1) failure to make any payment to be paid by Trustor under the Loan Documents within ten (10) days following written notice such payment is due; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination, subject to applicable notice and cure periods, if any, included in the Loan Documents; or (3) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein.

Section 7.2 Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid Principal of the Note shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Default and Election to Sell"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Santa Clara County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

#### Section 7.4 Foreclosure by Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "Notice of Sale") and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid principal amount of the Note and the amount of City Grant Funds is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and Election to Sell and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other amounts owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without

further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver.

If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or any breach by the Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or

omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under the Note or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8:  
MISCELLANEOUS

Section 8.1 Amendments.

This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven, and upon surrender of this Deed of Trust to Trustee for cancellation and retention,

and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

If at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary shall be addressed to:

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

and (2) if intended for Trustor shall be addressed to:

Aster Park, LP  
303 Vintage Park Drive, Suite 250  
Foster City, California 94404  
Attention: Executive Director

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.4 Successors and Joint Trustors.

Where an obligation is created herein binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligations of the Trustor and such transferee. Where more than one entity or person is signing as Trustor, all obligations of Trustor shall be deemed to be a joint and several obligations of each and every entity and person signing as Trustor.

Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

Section 8.10 Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 8.14 Further Advances.

Beneficiary may, at its option, at any time during the term of the Loan Agreement, make further advances to Trustor, with interest and late charges to be secured by this Deed of Trust.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

ASTER PARK Limited Partnership,  
a California limited partnership

By: Mid-Peninsula Coalition Aster Park  
Corporation  
Its General Partner

By: \_\_\_\_\_  
Its: 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)

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



EXHIBIT "A"

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A, AS SAID PARCEL IS SHOWN UPON THAT RECORD OF SURVEY MAP RECORDED NOVEMBER 1968 IN BOOK 244 OF MAPS AT PAGE 28, SANTA CLARA COUNTY RECORDS, AND BEING ALSO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL A AND THENCE ALONG THE BOUNDARY OF SAID PARCEL A FOR ALL THE FOLLOWING COURSES:

NORTH 594.40 FEET; SOUTH  $89^{\circ} 39' 10''$  WEST, 183.96 FEET; ALONG A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET, A CENTRAL ANGLE OF  $89^{\circ} 39' 10''$  AND AN ARC LENGTH OF 266.01 FEET; SOUTH, 266.09 FEET; ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 213.00 FEET, A CENTRAL ANGLE OF  $24^{\circ} 03' 30''$  AND AN ARC LENGTH OF 89.44 FEET; SOUTH 74.53 FEET; SOUTH  $87^{\circ} 45' 16''$  EAST 82.23 FEET; AND NORTH  $3^{\circ} 32' 24''$  EAST, 289.35 FEET TO THE POINT OF BEGINNING.



EXHIBIT D  
REGULATORY AGREEMENT



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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

No fee for recording pursuant to  
Government Code Section 27383

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REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
(Aster Park Apartments Rehabilitation Project)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of this \_\_ day of May 2010, by and between the City of Sunnyvale, a municipal corporation (the "City") and Aster Park, LP, a California nonprofit public benefit corporation (the "Borrower").

RECITALS

A. The City and the Borrower have entered into a HOME Investment Partnerships ("HOME") Program Loan Agreement pursuant to which the City will provide a loan (the "Loan") to the Borrower to rehabilitate that certain real property known as Aster Park (the "Project"), a 95-unit affordable apartment project for seniors and families owned by Aster Park, LP and located in the City of Sunnyvale, California as more particularly described in Exhibit A attached hereto (the "Property"). Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Loan Agreement (as defined below).

B. The Loan is funded with HOME Investment Partnership Program funds received by the City from HUD pursuant to the Cranston-Gonzales National Housing Act of 1990, as amended.

C. The City has agreed to make the Loan to the Borrower on the condition that the Project be maintained and operated in accordance with restrictions concerning affordability, operation, and maintenance of the Project, as specified in this Agreement and the Loan Agreement.

D. In order to ensure that the entire Project will be used and operated in accordance with these conditions and restrictions, the City and the Borrower desire to enter into this Agreement.

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 the Borrower hereby agree as follows.

## ARTICLE 1 DEFINITIONS

### 1.1 Definitions

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(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) "Assumed Household Size" shall mean a household containing one (1) or more family members.

(e) "Borrower" shall mean Aster Park, LP, a California nonprofit benefit corporation and its successors and assigns to the Project.

(f) "City" shall mean the City of Sunnyvale, a municipal corporation.

(g) "City Assisted Units" shall mean the Units which, pursuant to Section 2.1(b) below, are required to be occupied by, or if vacant available for occupancy by, Very-Low Income Households.

(h) "Deed of Trust" shall mean the deed of trust to the City on the Property which secures repayment of the Loan and the performance of the Loan Agreement and this Agreement.

(i) "Project" shall have the meaning set forth in Recital A above.

(j) "Loan" shall mean all funds loaned to the Borrower by the City pursuant to the Loan Agreement.

(k) "Loan Agreement" shall mean the HOME Investment Partnerships ("HOME") Loan Agreement entered into by and between the City and the Borrower, dated as of May \_\_, 2010.

(l) "Median Income" shall mean the median gross yearly income, adjusted for Actual Household Size or Assumed Household Size as specified herein, in the County of Santa Clara, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD") and the State of California. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall provide the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and the State.

(m) "Note" shall mean the promissory note from the Borrower to the City evidencing all or any part of the Loan.

(n) "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein.

(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 paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; 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.

(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 (55<sup>th</sup>) anniversary date of this Agreement, or such later date in the event the City and Borrower agree to extend such term.

(r) "Unit" shall mean one of the ninety-five (95) townhouse/apartments in the Project, except for one manager's unit.

(s) "Very-Low Income Household" shall mean a household with an Adjusted Income that does not exceed the lesser of (1) qualifying limit for very-low income families under the HOME program as defined in 24 CFR 92.2 or (2) the qualifying limits for very low income households, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by the State of California Department of Housing and Community Development.

(t) "Very-Low Income Rent" shall mean the maximum allowable rent for Very-Low Income Unit pursuant to Section 2.2(a) below.

## EXHIBIT A: Legal Description of Property

### ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

#### 2.1 Occupancy Requirements.

(a) City Assisted Units. All of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Very-Low Income Households.

#### 2.2 Allowable Rent

(a) Very-Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent (including utility allowance) charged to Tenants of the City Assisted Units shall not exceed the lesser of (1) one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Median Income, adjusted for Assumed Household Size or (2) the rent established by HUD for Very-Low Income Households, adjusted for Assumed Household Size.

(b) City Approval of Rents. Initial rents for all City Assisted Units shall be approved by the City prior to occupancy. All rent increases shall also be subject to City approval. The City shall provide the Borrower with a schedule of maximum permissible rents for the City Assisted Units annually.

#### 2.3 Increased Income of Tenants

##### (a) Non-Qualifying Household.

If, upon recertification of the income of a Tenant of a Very-Low Income Unit, the Borrower determines that a former Very-Low Income Household's Adjusted Income has increased and exceeds the qualifying income for a Very Low Income Household as set forth in Section 1.1(s), such Tenant shall be permitted to continue to occupy the Unit and, then, upon expiration of the Tenant's lease;

(1) Such Tenant's Rent may be increased to one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of the actual Adjusted Income of the Tenant upon sixty (60) days' written notice to Tenant;

(2) If the Tenant previously occupied a Very-Low Income Unit, the next available Unit shall be rented to a Very-Low Income Household in order to comply with Section 2.1(a) above;

(b) Termination of Occupancy. Upon termination of occupancy of a Unit by a Tenant, such 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 income character of the Unit (e.g., Very-Low Income Unit) shall be redetermined.

### ARTICLE 3 INCOME CERTIFICATION AND REPORTING

#### 3.1 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 Units. The Borrower shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a pay stub for the most recent pay period; (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 unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be available to the City upon request.

#### 3.2 Annual Report to the City.

The Borrower shall submit to the City (a) not later than the sixtieth (60<sup>th</sup>) day after the close of each calendar year, or such other date as may be requested by the City, a statistical report, including income and rent data for the Very Low Income Household Units, setting forth the information called for therein, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the City in order to comply with reporting requirements of the United States Department of Housing and Urban Development or the State of California.

#### 3.3 Additional Information.

The Borrower shall provide any additional information reasonably requested by the City to the City. 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.

#### 3.4 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 Units for a period of at least five (5) years.

3.5 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. The Borrower agrees to cooperate in such inspection.

ARTICLE 4  
OPERATION OF THE PROJECT

4.1 Use of the Development.

The Project shall be operated as ninety-five (95) affordable rental apartments for income-eligible households, including individuals, seniors, and families.

4.2 Compliance with Loan Agreement.

Borrower shall comply with all the terms and provisions of the Loan Agreement.

4.3 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.

ARTICLE 5  
PROPERTY MANAGEMENT AND MAINTENANCE

5.1 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. The City hereby approves Mid-Peninsula Housing Management Corporation as the Management Agent.

## 5.2 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.

## 5.3 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.

## 5.4 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 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.

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.

5.5 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.

5.6 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 in good condition and repair.

ARTICLE 6  
MISCELLANEOUS

6.1 Lease Provisions.

The Borrower shall use a form of Tenant lease approved by the City. The lease for the City Assisted Units shall not contain any provision which is prohibited by 24 CFR Section 92.253(b) and any amendments thereto. The form of Tenant lease shall also comply with all requirements of this Agreement and the Loan Agreement, and shall, include the following provisions for the City 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, 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, 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, such lease may be month to month by mutual agreement of the Borrower and the Tenant; however the Rent may not be raised more often than once a year. The Borrower will provide each Tenant at least sixty (60) days' written notice of any increase in Rent applicable to such Tenant, 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 shall be in conformance with 24 CFR 92.253(c) and must be preceded by no less than thirty (30) days written notice to the tenant by the Borrower specifying the grounds for the action.

## 6.2 Nondiscrimination.

All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. The Borrower shall not give preference to any particular class or group of persons in renting or selling the Units, or any part of the Project except to the extent that the Units are required to be leased to Very-Low Income Households. 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 Development, 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, sublessees, subtenants, or vendees of any Unit or any part of the Project or in connection with the employment of persons for the rehabilitation operation and management of any Project.

## 6.3 Section 8 Certificate Holders.

The Borrower will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Borrower shall not apply selection criteria to Section 8 certificate or 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 Units by such prospective Tenants.

## 6.4 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.

## 6.5 Compliance with Loan Agreements and Program Requirements.

Borrower's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the Loan Agreements; and (ii) all requirements imposed on projects assisted under the HOME Investment Partnership Program as contained in 42 USC 12701, et seq., 24 CFR Part 92, and other implementing rules and regulations.

## 6.6 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 City 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 if the City.

6.7 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 Property, 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 Property from the requirements of this Agreement.

6.8 Enforcement by the City.

If the Borrower fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified the Borrower in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days, the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Calling the Loan. The City may declare a default under the Note, accelerate the indebtedness evidenced by the Note, and with respect to the Loan proceed with foreclosure under the Deed of Trust.

(b) 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.

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

6.9 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.

6.10 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.

6.11 Governing Law.

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

6.12 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.

6.13 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.

6.14 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: Aster Park, LP  
303 Vintage Park Drive, Suite 250  
Foster City, California, 994404  
Attention: President

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

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

6.15 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.

6.16 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.

IN WITNESS WHEREOF, the City and the Borrower have executed this Agreement by duly authorized representatives, all on the date first written above.

BORROWER:

ASTER PARK Limited Partnership,  
a California limited partnership

By: Mid-Peninsula Coalition Aster Park  
Corporation  
Its General Partner

By: \_\_\_\_\_  
Its: Assistant Secretary

CITY:

CITY OF SUNNYVALE, a municipal  
corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

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 of Property



EXHIBIT "A"

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A, AS SAID PARCEL IS SHOWN UPON THAT RECORD OF SURVEY MAP RECORDED NOVEMBER 1968 IN BOOK 244 OF MAPS AT PAGE 28, SANTA CLARA COUNTY RECORDS, AND BEING ALSO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL A AND THENCE ALONG THE BOUNDARY OF SAID PARCEL A FOR ALL THE FOLLOWING COURSES:

NORTH 594.40 FEET; SOUTH  $89^{\circ} 39' 10''$  WEST, 183.96 FEET; ALONG A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET, A CENTRAL ANGLE OF  $89^{\circ} 39' 10''$  AND AN ARC LENGTH OF 266.01 FEET; SOUTH, 266.09 FEET; ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 213.00 FEET, A CENTRAL ANGLE OF  $24^{\circ} 03' 30''$  AND AN ARC LENGTH OF 89.44 FEET; SOUTH 74.53 FEET; SOUTH  $87^{\circ} 45' 16''$  EAST 82.23 FEET; AND NORTH  $3^{\circ} 32' 24''$  EAST, 289.35 FEET TO THE POINT OF BEGINNING.



EXHIBIT E  
PROJECT BUDGET



## Aster Park Rehabilitation Budget-City of Sunnyvale Sources

<b>SOURCES</b>	
City of Sunnyvale HOME funds	1,300,000
<b>Total</b>	<b>1,300,000</b>
<b>USES</b>	
<b>Hard Costs</b>	
Direct Construction Improvements	781,307
Contractor General Conditions	66,680
Contractor Insurance & Bond	19,649
Contractor Overhead & Profit	117,767
Total GMP Contact	985,403
Owner Hard Cost Contingency	147,810
<i>Subtotal</i>	<i>\$ 1,133,213</i>
<b>Soft Costs</b>	
Permits- City of Sunnyvale	52,000
Prevailing Wage Compliance Monitor	10,500
Project Management Fees	10,000
Construction Management	59,124
Builder's Risk Insurance	10,000
Owner Soft Cost Contingency	25,162
<i>Subtotal</i>	<i>166,787</i>
<b>Total</b>	<b>\$ 1,300,000</b>



EXHIBIT F  
SCOPE OF WORK



## **Aster Park Apartments- Draft Scope of Work**

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### **Kitchen**

The kitchen cabinets in 79 units will need to be removed from the walls along with the counter tops and sinks, garbage disposal and plumbing fixtures. The kitchen exhaust fans will also need to be removed and replaced along with the electrical outlets that are not GFI next to all wet areas. 38 Units have had water damage in the past which caused damage to the kitchen ceilings that would need to be repaired properly. 95 units should have the kitchen electrical lighting fixture replaced. The sheet vinyl flooring should be replaced in 18 units.

### **Bathrooms**

The bathroom cabinets in 79 units will need to be removed and replaced along with the sinks and faucets, in our two bedroom units they have a sink in there upstairs hallway and 32 units will need to have the countertops and the faucets removed and replaced. 41 of the bathrooms wall sconces will need to be removed and replaced due to corrosion. There are 120 exhaust fans and all the units should have them removed and replaced with a higher CFM fan. The bathrooms will need to have new wiring to accommodate the new humidistat's that will need to be installed to prevent future mold in the units.

### **Interiors**

The carpet in 22 units will need to be removed and reinstalled with new carpeting. All original single pane windows and sliding glass doors will need to be removed and replaced with new vinyl framed thermal pane frames and glass in all the units. The heating units in 15 units will need to be removed and replaced with new heating units.

### **Club house**

The main doors, the bathroom doors and the social room doors to the clubhouse will need to be replaced with new handicap lever handles installed. The bathrooms will need to be brought up to ADA compliance.

### **Building Insulation**

Buildings # 1, 7, 11 & 12 will need to have R-30 insulation installed in the attics.

### **Building Exterior**

Some buildings have dry rot on the T-11 siding and on the wood decks and fascia board. The decks on the 2<sup>nd</sup> and 3<sup>rd</sup> floors have wood posts that are sitting on the 1<sup>st</sup> floor and 75% of them have dry rot. Buildings # 3 and 5 will need to have all the T-11 siding and balconies replaced. All of the buildings will need to be repainted.

## **Roofs**

The flat roof decks will need roof grate screens installed and all pipes and lines need to have blocks installed to prevent water puddle ling. Building #10 will need to have new shingles installed at balconies.

## **Exterior Stairs**

The stringers at all areas will need to be replaced and reinstalled and a structural footing will need to be designed and installed for the new stringers.

## **Landscape**

Landscape needs to be removed and updated due to roots breaking water lines and excessive watering. A new irrigation system should be installed throughout the complex. The property has a lot of trees that will need to be trimmed back to prevent them from growing on the roof tops of the building.

## **Appliances**

There are approximately 20% of the appliances that should be replaced with new appliances due to broken gaskets that waste energy.

EXHIBIT G  
REHABILITATION SCHEDULE



**Aster Park- Rehab Schedule****5/18/2010**

<b>PROJECT TASK</b>	<b>PDOC</b>
Obtain Contract Bids for Scope of Work	6/23/2010
Interview Contractors	6/30/2010
Obtain Approval from MPHC on Final Budget	7/1/2010
Obtain Approval from LP/Lenders on Final Scope	7/1/2010
Execute Construction Contract	7/15/2010
Notice to Proceed Issued	7/16/2010
50% Construction completed	10/1/2010
Complete Construction	12/15/2010



# **ATTACHMENT B**

## **DEVELOPMENT BUDGET**



## Aster Park Rehabilitation Budget

<b>SOURCES</b>	
City of Sunnyvale HOME funds	1,300,000
Property Replacement Reserve	638,925
<b>Total</b>	<b>1,938,925</b>
<b>USES</b>	
<b>Hard Costs</b>	
Direct Construction Improvements	1,306,739
Contractor General Conditions	66,680
Contractor Insurance & Bond	19,649
Contractor Overhead & Profit	117,767
Total GMP Contact	1,510,835
Owner Hard Cost Contingency	226,625
<i>Subtotal</i>	<b>\$ 1,737,460</b>
<b>Soft Costs</b>	
Permits- City of Sunnyvale	52,000
Prevailing Wage Compliance Monitor	10,500
Project Management Fees	10,000
Construction Management	90,650
Builder's Risk Insurance	10,000
Owner Soft Cost Contingency	28,315
<i>Subtotal</i>	<b>201,465</b>
<b>Total</b>	<b>\$ 1,938,925</b>