

AFFORDABLE HOUSING AND PROPERTY DISPOSITION AGREEMENT

(Phase 1)

By and Between

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO

and

MP MIDWAY ASSOCIATES I, L.P.

Dated as of _____

AFFORDABLE HOUSING AND PROPERTY DISPOSITION AGREEMENT

THIS AFFORDABLE HOUSING AND PROPERTY DISPOSITION AGREEMENT (the “**Agreement**”) is made and entered into as of _____ (the “**Effective Date**”), by and between the HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO, a public body, corporate and politic (the “**HACSM**”), and MP MIDWAY ASSOCIATES I, L.P., a California limited partnership (the “**Developer**”). HACSM and Developer are sometimes referred to hereinafter individually as a “Party” and collectively as the “Parties.”

RECITALS

A. HACSM is a California entity, organized and existing under California Health and Safety Code section 34200, *et seq.*, authorized to engage, or assist, in the ownership, development, and operation of affordable housing, with its offices in the County of San Mateo.

B. Developer is a California limited partnership. Developer was established to develop and operate safe, decent affordable housing in Northern California.

C. HACSM owns fee title to certain real property consisting of approximately twelve (12) acres located at 47 Midway Drive, in the City of Daly City, County of San Mateo, State of California, which is more particularly described in Attachment No. 1 to this Agreement (the “**Midway Village Property**”). The Midway Village Property is improved with an aging affordable housing rental development containing one hundred fifty (150) affordable units and commonly known as “Midway Village” (“**Midway Village**”). The Midway Village Property has been ground leased to HACSM’s wholly owned subsidiary, SAMCHAI, a California nonprofit public benefit corporation (“**SAMCHAI**”). In connection with said ground lease, HACSM transferred title to the Midway Village improvements to SAMCHAI. As part of this transaction, HACSM will terminate said ground lease, and SAMCHAI will deed the existing Midway Village improvements back to HACSM.

D. HACSM also owns fee title to certain real property consisting of approximately one-half (.5) acre located at 45 Midway Drive, adjacent to the Midway Village Property, which is more particularly described in Attachment No. 2 to this Agreement (the “**Bayshore Childcare Property**”). The Bayshore Childcare Property is improved with the Bayshore Child Development Center (the “**Childcare Center**”).

E. Pursuant to that certain Option to Purchase and Purchase Agreement between the City of Daly City (the “**City**”) and HACSM (“**Option to Purchase**”), HACSM has an option to acquire from the City that certain real property consisting of approximately three and five tenths (3.5) acres located at 45 Midway Drive, adjacent to the Midway Village Property and Bayshore Childcare Property, which is more particularly described in Attachment No. 3 to this Agreement (the “**Park Property**”). The Park Property is improved with a public park commonly known as “David R. Rowe Park” or “Bayshore Park” (the “**Park**”).

F. On June 29, 2017 HACSM issued a Request for Proposals (the “**RFP**”) to select a developer who would (i) consult with the City to identify and designate a portion of the Park Property, Midway Village Property, and/or Bayshore Childcare Property that is equivalent in size to the Park (the “**Replacement Park Site**”) to be deeded to the City for the City’s development thereon of a replacement park, (ii) ground lease all portions of the Park Property, Midway Village Property, and Bayshore Childcare Property that do not comprise portions of the Replacement Park Site (all such portions, collectively, the “**Midway/Bayshore Redevelopment Site**”) from HACSM, (iii) develop a new childcare center within the Midway/Bayshore Redevelopment Site and sublease the underlying property of said new childcare center to the existing sublessee of the Childcare Center, and (iv) develop and operate on the Midway/Bayshore Redevelopment Site a new, high quality affordable housing development, with associated amenities, and on-site relocation of the existing tenants of Midway Village (collectively, the “**Midway/Bayshore Redevelopment Project**”).

G. On September 28, 2017, MidPen Housing Corporation, a California nonprofit public benefit corporation (“**MidPen**”), which is an Affiliate of Developer, submitted a proposal to the RFP, and on January 23, 2018, the San Mateo County Board of Supervisors, sitting as the Board of HACSM, authorized HACSM to enter into an exclusive negotiating rights agreement with MidPen.

H. On or about March 21, 2018, HACSM and MidPen entered into that certain Exclusive Negotiating Rights Agreement (Midway/Bayshore Redevelopment Project) (the “**ENRA**”), pursuant to which, among other things, HACSM and MidPen agreed to attempt to negotiate an agreement that would set forth the terms and conditions for HACSM’s ground lease of portions of the Midway/Bayshore Redevelopment Site to MidPen or an Affiliate of MidPen, in phases, and MidPen’s (or an Affiliate of MidPen’s) development and operation of the Midway/Bayshore Redevelopment Project. The ENRA is available

for public inspection at the office of HACSM.

I. Pursuant to the ENRA, on or about June 25, 2018, HACSM and MidPen entered into that certain Predevelopment Agreement (the “**First Predevelopment Agreement**”), pursuant to which HACSM agreed to provide MidPen with a predevelopment loan in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) (the “**First Predevelopment Loan**”) for purposes of performing certain predevelopment activities as set forth in Exhibit A to the First Predevelopment Agreement and in Article 2 of the ENRA. HACSM and MidPen are in discussions to amend the First Predevelopment Agreement to increase the principal amount of the First Predevelopment Loan. The First Predevelopment Agreement is available for public inspection at the office of HACSM, at 264 Harbor Blvd., Building A, Belmont, CA 94002-4017.

J. In 1991, the State Department of Toxic Substances Control (“**DTSC**”) issued Imminent and Substantial Endangerment Orders I/SE-90/91-004 and I/SE-90/91-004A (and amendments) to the United States Navy, United States Department of Housing and Urban Development, PG&E, HACSM, and the City (collectively, the “**Remediation Entities**”), alleging that the soil in a portion of the Park Property and in a portion of the Midway Village Property were contaminated from substances generated by the former gas manufacturing facility located adjacent to the Midway Village Property and Park Property.

K. In August 1993 DTSC approved a Remedial Action Plan (a “**RAP**”), and from approximately 1993 to 2002, pursuant to the RAP, remediation activities were carried out within the contaminated areas of the Park Property and Midway Village Property. Deed restrictions (the “**Deed Restrictions**”) were recorded against the entire Park Property and portions of the Midway Village Property (collectively, the “**Deed Restricted Areas**”). On or about June 6, 2018, HACSM and DTSC entered into that certain Voluntary Oversight Agreement (the “**VOA**”), pursuant to which HACSM agreed to undertake certain tasks, including preparation of a soil management plan (the “**SMP**”). The Parties anticipated that completion of such tasks would facilitate the termination or modification of the Deed Restrictions and permit the Deed Restricted Areas to be developable with residential development. The Parties acknowledge and agree that prior to the Effective Date, HACSM and MidPen entered into a letter agreement pursuant to which MidPen agreed to perform certain of HACSM’s obligations under the VOA, and HACSM agreed to reimburse MidPen for the costs MidPen incurs in performing such tasks from proceeds of the First Predevelopment Loan. The VOA is available for public

inspection at the office of HACSM, at 264 Harbor Blvd., Building A, Belmont, CA 94002-4017.

L. Subsequent to HACSM and DTSC entering into the VOA, the Parties discovered that DTSC will not terminate or revise the Deed Restrictions in a manner that will allow the Midway/Bayshore Redevelopment Project to proceed without further soil gas testing and, if required, remediation and/or mitigation. HACSM and Developer have prepared and submitted to DTSC for approval a proposed amendment to the RAP, to incorporate such additional soil gas testing and, if required, installation of a vapor mitigation system and post-construction monitoring, all as and to the extent required by DTSC (the "**RAP Amendment**"). As of the Effective Date, the RAP Amendment has been submitted to DTSC for approval.

M. On May 28, 2019, MidPen and HACSM entered into that certain Master Affordable Housing and Property Disposition Agreement (the "**Master AHPDA**"), pursuant to which, among other things, MidPen and HACSM set forth (i) the scope of the overall Midway/Bayshore Redevelopment Project, which the Parties contemplate MidPen (or an Affiliate of MidPen) will develop in four (4) phases (each, a "**Phase**"), (ii) outside timeframes for commencement and completion of each Phase, (iii) the financial assistance to be provided by HACSM to MidPen (or an Affiliate of MidPen), and (iv) the form of affordable housing and property disposition agreement to be entered into by HACSM and MidPen (or an Affiliate of MidPen) with respect to each Phase, for purposes of setting forth the specific obligations of each of HACSM and MidPen (or an Affiliate of MidPen) for such Phase (each such agreement, an "**AHPDA**").

N. On January 30, 2020, HACSM and MidPen entered into that certain Predevelopment Agreement (the "**Second Predevelopment Agreement**"), pursuant to which HACSM agreed to provide MidPen with a predevelopment loan in the amount of One Million Four Hundred Nine Thousand Seven Hundred Ninety-Five Dollars (\$1,409,795) (the "**Second Predevelopment Loan**") for purposes of performing certain additional predevelopment activities as set forth in Exhibit A to the Second Predevelopment Agreement. HACSM and MidPen are in discussions to amend the Second Predevelopment Agreement to increase the principal amount of the Second Predevelopment Loan. The Second Predevelopment Agreement is available for public inspection at the office of HACSM, at 264 Harbor Blvd., Building A, Belmont, CA 94002-4017.

O. On July 2, 2020, MidPen and HACSM entered into that certain Amendment No. 1 to Master Affordable Housing and Property Disposition Agreement (“**Amendment No. 1 to Master AHPDA**”) to provide for certain changes to the approved form of AHPDA to address (i) the RAP Amendment and compliance therewith, (ii) changes to the partnership structure contemplated pursuant to the Master AHPDA, and (iii) changes to the financing contemplated pursuant to the Master AHPDA to be provided by HACSM, and to extend the time for performance of one item in the schedule attached to the Master AHPDA. Each of the Master AHPDA and Amendment No. 1 to Master AHPDA are available for public inspection at the office of HACSM, at 264 Harbor Blvd., Building A, Belmont, CA 94002-4017.

P. On August 10, 2020, HACSM exercised its Option to Purchase, and anticipates that it will close escrow and acquire the Park within three (3) days following the Effective Date.

Q. This Agreement constitutes the AHPDA for Phase 1, and sets forth the terms and conditions on which HACSM shall ground lease to Developer (i) the portion of the Midway Village Property, consisting of approximately eighty-one hundredths (.81) acres that, as of the Effective Date, is improved with the existing management office and maintenance facility, and (ii) a portion of the Park Property, consisting of approximately two and ninety-six hundredths (2.96) acres (collectively, the “**Property**”), for Developer’s development and subsequent operation thereon of a rental affordable housing development containing one hundred forty-seven (147) rental dwelling units, eighteen (18) of which dwelling units shall constitute the eighteen (18) affordable units required to be constructed pursuant to Section 1.9 of that certain Memorandum of Understanding among Bayshore Elementary School District, the County of San Mateo, The Housing Authority of the County of San Mateo and the City of Daly City, dated March 31, 2016 (the “**Project**”). The Property consists of approximately three and seventy-seven hundredths (3.77) acres. Developer and HACSM contemplate that the legal description for the Property is the legal description set forth in Attachment No. 4 to this Agreement, and that the Property is as depicted in the Site Map set forth in Attachment No. 5 to this Agreement.

R. The ground lease of the Property to Developer and the development and subsequent operation of the Project on the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in furtherance of HACSM’s goals to provide permanent affordable housing and to preserve existing affordable housing units in the

County of San Mateo, are in the vital and best interests of the County of San Mateo and the welfare of its residents, and are in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements under which the Project has been undertaken.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated herein by this reference, and the mutual promises, covenants, and conditions herein contained, HACSM and Developer hereto agree as follows:

1. DEFINITIONS

As used in this Agreement, capitalized terms are defined where first used or as set forth in this Section 1. Capitalized terms used in an attachment attached hereto and not defined therein shall also have the meanings set forth in this Section 1.

"Affiliate" mean any "Person," directly or indirectly, "Controlling" or "Controlled" by or under common "Control" with such Person, whether by direct or indirect ownership of equity interests, by contract or otherwise, where **"Person"** means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind, **"Control"** means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract or otherwise, and **"Controlling"** and **"Controlled"** means exercising or having Control.

"Annual Financial Statement" shall mean the financial statements prepared by Developer for each calendar year, including a balance sheet, income statement, statement of retained earnings, statement of cash flow, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied, as audited by an independent certified public accountant.

"Approved RAP Amendment" shall mean the RAP Amendment, as modified (if necessary) to obtain approval by DTSC.

"Building Permit" means all permits issued by the City and required for commencement of construction of the Project.

"CDLAC" means the California Debt Limit Allocation Committee.

“City” means the City of Daly City, California.

“Construction Contract” has the meaning set forth in Section 7.2(e) of this Agreement.

“Construction Lender” means the lender that provides construction financing for the Project. If the Project is financed through issuance of the Tax-Exempt Bonds, then Construction Lender shall be understood to mean the institution or institutions that hold such Tax-Exempt Bonds through the construction period (e.g., until the Conversion Date). The Construction Lender may or may not also be the Take-Out Lender. The Construction Lender shall be an Institutional Lender.

“Construction Loan” means the construction loan for the Project secured by the Construction Loan Security Documents, in the amount set forth in the Final Project Budget. If the Project is financed through issuance of the Tax-Exempt Bonds, then Construction Loan shall be understood to mean the proceeds of such Tax-Exempt Bonds.

“Construction Loan Security Documents” means the documents and instruments required by the Construction Lender to secure the Construction Loan.

“County” means the County of San Mateo, California.

“Conversion Date” has the meaning set forth in the Construction Loan Security Documents, or, if such term is not defined therein, means the date the Construction Loan converts from a construction loan to a permanent loan.

“Developer” has the meaning set forth in the opening paragraph of this Agreement.

“Developer Title Policy” has the meaning set forth in Section 7.3(g) of this Agreement.

“DTSC” has the meaning set forth in Recital J above.

“Escrow” means the escrow through which the Property Closing is conducted.

“Escrow Holder” means Old Republic Title Company, with its offices located at 555 12th Street, Suite 2000, Oakland, CA 94607, or such other escrow company as may be agreed to by Developer and the Executive Director.

“Event of Default” has the meaning set forth in Section 13.1 of this Agreement.

“Executive Director” means the person duly appointed to the position of Executive Director of HACSM, or his or her designee. The Executive Director shall represent HACSM in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by HACSM, the Executive Director is authorized to act unless this Agreement specifically provides otherwise or the context should otherwise require.

“Final Project Budget” shall mean the final HACSM-approved budget for the Project, as more fully discussed in Section 6.4 below.

“Final Construction Documents” means the final plans, drawings and specifications upon which the Building Permit is issued.

“General Contractor” has the meaning set forth in Section 7.2(e) of this Agreement.

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, requirements, orders and decrees, of the United States, the State of California, the County of San Mateo, DTSC, the City and of any other political subdivision, agency or instrumentality exercising jurisdiction over HACSM, Developer, the Property, and/or the Project, including common law.

“Ground Lease” means a ground lease substantially in the form attached hereto and incorporated herein as Attachment No. 12, to be executed by Developer and HACSM to set forth the terms and conditions for HACSM’s lease of the Property to Developer.

“HACSM” means the Housing Authority of the County of San Mateo, a public body, corporate and politic.

“HACSM Deed of Trust” means a deed of trust encumbering Developer’s leasehold interest in the Property, substantially in the form attached hereto and incorporated herein as Attachment No. 10, to be executed by Developer pursuant to Section 6.2(a) in order to secure repayment of the HACSM Note.

“HACSM/Lender Subordination Agreement” means, with respect to the Property Closing, (i) a subordination agreement between HACSM and the Construction Lender, pursuant to which HACSM agrees to subordinate the HACSM Deed of Trust to the

Construction Loan Security Documents, and the Construction Lender agrees to subordinate the Construction Loan Security Documents to the HACSM Regulatory Agreement, and, with respect to the closing of the Take-Out Loan at conversion, (ii) a subordination agreement between HACSM and the Take-Out Lender, pursuant to which HACSM agrees to subordinate the HACSM Deed of Trust to the documents securing the Take-Out Loan, and the Take-Out Lender agrees to subordinate the documents securing the Take-Out Loan to the HACSM Regulatory Agreement.

“HACSM Loan” has the meaning set forth in Section 6.2(a) of this Agreement.

“HACSM Note” means a promissory note substantially in the form attached hereto and incorporated herein as Attachment No. 9, to be executed by Developer in favor of HACSM to evidence the obligation of Developer to repay the HACSM Loan.

“HACSM Regulatory Agreement” means a regulatory agreement substantially in the form attached hereto and incorporated herein as Attachment No. 13, which will establish certain restrictive covenants against the Property.

“HACSM Title Policy” has the meaning set forth in Section 7.2(s) of this Agreement.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste”, “acutely hazardous waste”, “extremely hazardous waste”, or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material”, “hazardous substance”, or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of

Regulations, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., (xii) methyl-tertiary butyl ether, (xiii) perchlorate or (xiv) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment. For purposes hereof, “Hazardous Materials” excludes materials and substances in quantities as are commonly used in the construction and operation of an apartment complex, provided that such materials and substances are used in accordance with all applicable laws.

“Hazardous Materials Contamination” means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time emanating from the Property.

“HUD” means the United States Department of Housing and Urban Development.

“Indemnitees” means HACSM, SAMCHAI, the County, and their respective directors, officers, officials, members, employees, representatives, agents and volunteers.

“Institutional Lender” means any of the following institutions having assets or deposits in the aggregate of not less than One Hundred Million Dollars (\$100,000,000): a California chartered bank; a bank created and operated under and pursuant to the laws of the United States of America; an “incorporated admitted insurer” (as that term is used in Section 1100.1 of the California Insurance Code); a “foreign (other state) bank” (as that term is defined in Section 1700(1) of the California Financial Code); a federal savings and loan association (Cal. Fin. Code Section 8600); a commercial finance lender (within the meaning of Sections 2600 et seq. of the California Financial Code); a “foreign (other nation) bank” provided it is licensed to maintain an office in California, is licensed or otherwise authorized by another state to maintain an agency or branch office in that state,

or maintains a federal agency or federal branch in any state (Section 1716 of the California Financial Code); a bank holding company or a subsidiary of a bank holding company which is not a bank (Section 3707 of the California Financial Code); a trust company, savings and loan association, insurance company, investment banker; college or university; pension or retirement fund or system, either governmental or private, or any pension or retirement fund or system of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any state thereof; and a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended, provided such trust is listed on either the American Stock Exchange or the New York Stock Exchange. Each of Wells Fargo and Bank of America are hereby deemed to be an Institutional Lender.

“Investor” means the limited partner of the Partnership.

“Land Use Entitlements” has the meaning set forth in Section 4 of this Agreement.

“Management Agreement” has the meaning set forth in Section 7.2(n) of this Agreement.

“Memorandum of Ground Lease” means the Memorandum of Unrecorded Ground Lease to record in the Official Records pursuant to Section 1.4 of the Ground Lease.

“Notices” has the meaning set forth in Section 14 of this Agreement.

“Official Records” means the Official Records of the County.

“Outside Closing Date” means the date that is six (6) months after the first date on which Developer has received an allocation of Tax Credits from TCAC.

“Partnership” has the meaning set forth in Section 2.2 of this Agreement.

“Partnership Agreement” means the partnership agreement for the Partnership.

“Permitted Encumbrances” means the Construction Loan Security Documents and such other exceptions to title approved by the Executive Director.

“Preliminary Project Budget” shall mean that certain preliminary budget attached

hereto and incorporated herein as Attachment No. 11.

“Project” means Developer’s (i) demolition of the existing management office and maintenance facility, and all park-related improvements situated on the Property, (ii) provision of a temporary management office and maintenance facility for use during construction of the new, permanent facilities, (iii) construction of an affordable rental housing development consisting of one hundred forty-seven (147) residential rental dwelling units, with one hundred forty-five (145) of such units restricted for rental to and occupancy by income-qualified households, and all required on-site improvements necessary to serve the development, and (iv) the resident on-site relocation of sixty (60) existing tenant households in Midway Village into sixty (60) of the newly constructed units, all in accordance with this Agreement, including, without limitation, in accordance with the Scope of Development, the Land Use Entitlements, and the Final Construction Documents.

“Project Architect” means David Baker Architects, or such other architect or architectural firm as may be approved by the Executive Director.

“Project Costs” means all costs of any nature incurred in connection with the planning, design, and development of the Project.

“Project Documents” means, collectively, this Agreement, the Ground Lease, the HACSM Note, the HACSM Deed of Trust, the HACSM Regulatory Agreement, the Memorandum of Ground Lease, and any other agreement, document or instrument that Developer and HACSM enter into pursuant to this Agreement or in order to effectuate the purposes of this Agreement.

“Project Financing” has the meaning set forth in Section 6.1 of this Agreement.

“Property” means that certain real property referred to in Recital O. HACSM and Developer contemplate that the legal description of the Property is the legal description set forth in Attachment No. 4, which is attached hereto and incorporated herein by this reference. The actual legal description for the Property is subject to final approval by the City; provided that any material modifications must be approved by HACSM and Developer. As currently contemplated, the Property comprises approximately three and seventy-seven hundredths (3.77) acres. In the event that the final approved legal description for the Property is different from the legal description in Attachment No. 4, this Agreement and all affected Attachments shall be automatically amended to reflect the

final approved legal description.

“Property Closing” means closing of the Project Financing, execution of the Ground Lease and delivery of possession of the Property to Developer pursuant thereto.

“RAP Amendment” has the meaning set forth in Recital L above

“Release of Construction Covenants” means a release document substantially in the form attached hereto and incorporated herein as Attachment No. 14, to be executed by HACSM and recorded in the Official Records upon Developer’s completion of the Project, as described in Section 10.15.

“Request for Notice” has the meaning set forth in Section 7.2(q) of this Agreement.

“Schedule of Performance” means the Schedule of Performance attached hereto and incorporated herein as Attachment No. 6.

“Scope of Development” means the Scope of Development attached hereto and incorporated herein as Attachment No. 7.

“Sources and Uses of Funds Statement” means the Sources and Uses of Funds statement attached to each of the Preliminary Project Budget and Final Project Budget.

“Site Map” means the site map attached hereto and incorporated herein as Attachment No. 5.

“Take-Out Lender” means the lending institution that makes the Take-Out Loan. If the Project is financed through issuance of Tax-Exempt Bonds, then Take-Out Lender shall be understood to mean the institution that holds or institutions that hold such Tax-Exempt Bonds from and after the construction period (e.g., from and after the Conversion Date). The Take-Out Lender may or may not also be the Construction Lender. The Take-Out Lender shall be an Institutional Lender.

“Take-Out Loan” means the long-term loan made by the Take-Out Lender to Developer in order to take out the Construction Loan. If the Project is financed through issuance of Tax-Exempt Bonds, then Take-Out Loan shall be understood to mean the proceeds of such Tax-Exempt Bonds.

“Tax Credits” has the meaning set forth in Section 6.1(b) of this Agreement.

“Tax Credit Program” means the low-income housing tax credit program authorized pursuant to Internal Revenue Code Section 42, California Health and Safety Code Sections 50199.6-50199.19, Revenue and Taxation Code Sections 17057.5, 17058, 23610.4, 23610.5, and applicable federal and State regulations such as 4 California Code of Regulations Sections 10300-10340.

“Tax-Exempt Bonds” means tax-exempt multifamily housing mortgage revenue bonds.

“TCAC” means the California Tax Credit Allocation Committee.

“Title Company” means Old Republic Title Company, with its offices located at 555 12th Street, Suite 2000, Oakland, CA 94607, or such other title insurance company as may be agreed to by Developer and the Executive Director.

“Tranche C Loan” means a surplus cash loan Developer shall obtain, which loan shall be repaid through cash flow generated from Developer’s operation of the Project.

2. PARTNERSHIP; HACSM AS CO-DEVELOPER

Developer is a California limited partnership in which MP Midway I, LLC, a California limited liability company (**“MP Midway I”**), is the general partner, and Mid-Peninsula Half Moon Bay, Inc., a California nonprofit public benefit corporation, is the sole member/manager of MP Midway I (the **“Partnership”**).

As a result of HACSM’s participation in the Project, HACSM shall be a co-developer of the Project. The Partnership shall enter into a developer services agreement with MidPen and HACSM that shall provide that as co-developer, HACSM is entitled to thirty percent (30%) of all net (i.e., cash) developer fee (net of any deferred developer fee and total general partner capital contributions).

3. SCHEDULE OF PERFORMANCE

The Schedule of Performance sets forth the times by which the parties are required to perform certain obligations set forth in this Agreement.

4. LAND USE ENTITLEMENTS

Developer has obtained from the City all discretionary governmental permits necessary to allow Developer to develop the Project in the manner required by this Agreement (collectively, the “**Land Use Entitlements**”).

5. DUE DILIGENCE PERIOD; PERMISSION TO ENTER PROPERTY; AS-IS; PHYSICAL AND ENVIRONMENTAL CONDITION

5.1 Due Diligence Period. HACSM shall permit Developer and Developer’s representatives and agents to enter onto the Property commencing on the Effective Date and continuing for a period of ninety (90) days thereafter (“Due Diligence Period”), for purposes of enabling Developer to examine, inspect, and investigate the physical and environmental condition of the Property, including any foundations, soil, subsurface soils, drainage, seismic and other geological and topographical matters, location of asbestos, toxic substances, Hazardous Materials, if any, and, at Developer’s sole and absolute discretion, to enable Developer to determine whether the Property is acceptable to Developer and suitable for Developer’s intended use; provided, however, in no event shall Developer conduct any intrusive testing procedures on the Property without the prior written consent of HACSM, which consent may not be unreasonably withheld. Developer and Developer’s representatives and agents shall also be entitled to enter onto the Property to conduct additional examinations and investigations at any time after expiration of the Due Diligence Period and through the Property Closing.

As a condition to Developer’s entry onto the Property prior to the Property Closing, whether before or after the expiration of the Due Diligence Period, Developer shall provide to HACSM a copy of all reports, studies and test results prepared by Developer’s consultants, without representation or warranty. Developer shall notify HACSM, in writing, at least twenty-four (24) hours prior to any entry by Developer or Developer’s representatives on the Property. HACSM shall have the right, but not the obligation, to accompany Developer during such investigations. As an additional condition of such entry, Developer shall (i) conduct all work or studies in a diligent, expeditious, and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after the investigation; (ii) obtain any required governmental permits and comply with all applicable laws and governmental regulations; (iii) keep the Property free and clear of all materialmen’s liens, lis pendens and other liens arising out of the entry and work performed under this paragraph; (iv) maintain or assure maintenance of workers’

compensation insurance (or state approved self-insurance) for all persons entering the Property in the amounts required by the State of California; and (v) provide to HACSM prior to initial entry a certificate of insurance evidencing that Developer and/or the persons entering the Property have procured and have in effect commercial general liability insurance that satisfies the requirements set forth in Section 10.6 hereof. Developer shall, in a timely manner, repair any and all damage to the Property caused by such inspections or investigations and shall indemnify, defend, and hold harmless the Indemnitees from and against any claims, liabilities, and losses arising from the entries of Developer and its representatives and agents on the Property pursuant to this Section 5.1, except to the extent that such claims liabilities and losses arise out of the intentional misconduct, active negligence, or illegal actions of any of the Indemnitees.

Notwithstanding Developer's right to enter the Property after expiration of the Due Diligence Period pursuant to the second sentence in the first paragraph of this Section 5.1, Developer shall notify HACSM in writing on or before the expiration of the Due Diligence Period of Developer's approval or disapproval of the physical and environmental condition of the Property and Developer's investigations with respect thereto. Developer's disapproval shall constitute Developer's election to terminate this Agreement and cancel the Escrow. Developer's failure to deliver notice to HACSM on or before the expiration of the Due Diligence Period shall be conclusively deemed Developer's disapproval thereof.

5.2 AS-IS; Release. Developer acknowledges and agrees that Developer is leasing the Property from HACSM solely in reliance on its own investigation, and that no representations and/or warranties of any kind whatsoever, express or implied, have been made by any of the Indemnitees.

AS A MATERIAL PART OF THE CONSIDERATION FOR HACSM'S AGREEMENT TO LEASE THE PROPERTY TO DEVELOPER, DEVELOPER AGREES TO ACCEPT THE PROPERTY "AS IS" AND "WHERE IS", WITH ALL FAULTS. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN AND SUBJECT TO APPLICABLE CALIFORNIA LAW, NO WARRANTY OR REPRESENTATION IS MADE BY HACSM WITH RESPECT TO THE PROPERTY AS TO (I) FITNESS FOR ANY PARTICULAR PURPOSE, (II) MERCHANTABILITY, (III) CONDITION, (IV) ABSENCE OF DEFECTS OR FAULTS, (V) ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, (VI) FLOODING, OR (VII) COMPLIANCE WITH LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY, AND THE

ENVIRONMENT, AS THEY MAY APPLY TO THE CURRENT CONDITION OF THE PROPERTY OR DEVELOPER'S INTENDED DEVELOPMENT, CONSTRUCTION OR USE, OR FOR ANY OTHER PURPOSE. DEVELOPER ACKNOWLEDGES THAT DEVELOPER WILL BE RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE AND LEGAL CONDITION OF THE PROPERTY.

Except for obligations expressly assumed by HACSM in this Agreement, Developer will be deemed to have waived and released HACSM of and from any and all claims, causes of action, damages or losses that may be incurred by Developer concerning the condition of the Property, whether known or unknown as of the Effective Date, except for a breach or default by HACSM of its obligations under this Agreement or any fraud or intentional misrepresentation by HACSM. Such waiver will be deemed to be a release of all rights held by Developer under California Civil Code §1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Developer Initials *dm*

5.3 Developer Indemnity. Developer shall save, protect, defend, indemnify, and hold harmless the Indemnitees from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "**Liabilities**") which may now or in the future be incurred or suffered by any of the Indemnitees by reason of, resulting from, in connection with, or existing in any manner whatsoever as a direct or indirect result and to the extent of (i) Developer's failure to comply with all applicable Governmental Requirements, including, without limitation, the Approved RAP Amendment and any additional requirements of DTSC, including, without limitation, any existing or future land use covenants required by DTSC; (ii) Developer's placement on or under the Property of any Hazardous Materials or Hazardous Materials Contamination; (iii) Developer's breach of its obligations under Section 5.5 or Section 5.6 hereinafter; or

(iv) any Liabilities incurred after the Property Closing under any Governmental Requirements relating to the acts described in the foregoing clauses (i), (ii), and (iii). Except for obligations assumed by Developer in Section 5.5 and Section 5.6 hereinafter, Developer shall have no indemnity obligation to any of the Indemnitees for any Liabilities arising from or related to HACSM's failure to comply with any Governmental Requirements, whether known or unknown, that existed or arose prior to the Property Closing regardless of when such Liabilities may accrue.

5.4 HACSM Indemnity. HACSM shall save, protect, defend, indemnify, and hold harmless Developer and its directors, officers, employees, and agents (collectively, the "**Developer Indemnified Parties**") from and against any and all Liabilities which may now or in the future be incurred or suffered by any of Developer Indemnified Parties as a result of third party claims for bodily injury or property damage arising from Hazardous Materials present or released at the Property prior to the Property Closing.

5.5 Duty to Prevent Hazardous Materials Contamination. Developer shall take commercially reasonable actions to prevent the exacerbation of an existing release of any Hazardous Materials located on the Property and the release of new Hazardous Materials to the Property after the Property Closing. For the avoidance of ambiguity only, nothing in the previous sentence shall limit Developer from maintaining Hazardous Materials existing on the Property prior to the Property Closing or consolidating such Hazardous Materials on the Property, all to the extent permitted by law. Developer's duty to prevent Hazardous Materials Contamination shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall comply with any state or local Government Requirements pertaining to apartment complexes in San Mateo County, California, as respects the disclosure, permitting, notification, storage, use, removal, and disposal of Hazardous Materials.

5.6 Obligation to Remediate Premises.

(a) Preparation of Reports. All final reports prepared by environmental consultants documenting the results of environmental assessments of the Property performed by either Party shall be submitted to DTSC for review promptly upon completion.

(b) Remediation Required Prior to Property Closing. Any remediation of Hazardous Materials that DTSC requires prior to the Property Closing, based upon review

of any such reports prepared pursuant to paragraph (a) above, shall be performed by HACSM at HACSM's sole cost and expense, including the expense to relocate any existing tenants, if required (“**HACSM's Remediation Obligation**”). If the anticipated cost of HACSM's Remediation Obligation is estimated by HACSM's environmental contractor to exceed Two Million Dollars (\$2,000,000), within forty-five (45) days after receiving such cost information, HACSM may, in HACSM's sole and absolute discretion, terminate this Agreement upon thirty (30) days written notice to Developer. Before any termination notice is delivered, however, the Parties shall meet and confer to attempt to negotiate an alternative cost allocation acceptable to both Parties.

(c) Remediation After Property Closing. Developer acknowledges that, as of the Property Closing and except for any portion of HACSM's Remediation Obligation not fully performed prior to the Property Closing, HACSM shall have no further obligation to undertake any action to address or respond to Hazardous Materials present on, under, or about the Property regardless of when the Hazardous Materials first occurred or when they were first discovered. After the Property Closing, except as specifically excepted by this Agreement, any remediation, investigation, mitigation or other response action (collectively “**Response Action**”) shall be performed by Developer at Developer's sole cost and expense without any reimbursement from HACSM, including (i) all Response Actions required by any federal, state, regional, or local governmental agency or political subdivision or to fulfill any Governmental Requirements and (ii) all actions necessary to use the Property for the purposes contemplated by the Regulatory Agreement, this Agreement, and the Ground Lease; and in either case (i) or (ii), regardless of whether the Hazardous Materials or Hazardous Materials Contamination that is the subject of such Response Action arose before or after the Property Closing and regardless of when it was first discovered. Such Response Actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies, risk assessments or other reports, and the performance of any cleanup, remedial, removal, mitigation or restoration work.

5.7 Environmental Insurance. HACSM may, at its sole cost and expense, purchase environmental insurance coverage in connection with this Agreement. If such insurance is obtained, HACSM shall add Developer as an additional named insured on such policy. However, HACSM makes no representation as to whether such insurance will be available in the marketplace as of the Closing Date or the policy limits and scope of coverage that can be obtained.

5.8 Environmental Inquiries. Developer, when it has received any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, or cease and desist orders related to Hazardous Materials or Hazardous Materials Contamination from any governmental agency, or when Developer is required by any regulatory authority to report any violation or potential violation of any Governmental Requirement pertaining to Hazardous Materials or Hazardous Materials Contamination (collectively, “**Environmental Inquiries**”), shall concurrently notify the Executive Director, and provide to him/her a copy or copies of the Environmental Inquiries.

In the event of a release of any Hazardous Materials into the environment in violation of law, Developer shall, as soon as possible after it becomes aware of the release, furnish to the Executive Director a notification that the release occurred and a copy of any and all test results and final reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Executive Director, Developer shall furnish to the Executive Director a copy or copies of any and all other Environmental Inquiries relating to or affecting the Property including, but not limited to, all environmental permit applications for permits, test results and final environmental reports, including, without limitation, those reports and other matters which may be characterized as confidential. For the avoidance of ambiguity only, Developer shall be under no obligation to furnish any attorney-client privileged documents; provided, however, that Developer may not withhold from HACSM facts regarding a violation of law that affects the Property.

5.9 Materiality. Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of Developer for the benefit of HACSM set forth in this Agreement are a material element of the consideration to HACSM under this Agreement, and that HACSM would not have entered into this Agreement unless Developer’s obligations were as provided for herein.

5.10 Review of Title of Site. Within thirty (30) days after the Effective Date, HACSM shall cause the Title Company to deliver to Developer a standard preliminary title report dated no earlier than the Effective Date (the “**Preliminary Title Report**”) with respect to the title to the Property, together with legible copies of the documents underlying the exceptions (“**Title Exceptions**”) set forth in the Preliminary Title Report. Developer shall have the right to approve or disapprove the Title Exceptions and any proposed encumbrances to the Property in the exercise of its sole discretion; provided, however, that Developer hereby approves the following Title Exceptions:

(a) The standard printed exceptions and exclusions contained in the Preliminary Title Report.

(b) The lien of any non-delinquent property taxes and assessments (to be prorated at close of Escrow).

(d) All documents to be recorded at the Property Closing pursuant to this Agreement.

Developer shall have fifteen (15) days after the later of (i) the date of its receipt of the Preliminary Title Report, or (ii) the date Developer receives the documents underlying the Title Exceptions, to give written notice to HACSM and Escrow Holder of Developer's approval or disapproval of any of such Title Exceptions. Developer's failure to give written disapproval of any of the Title Exceptions in the Preliminary Title Report within such time limit shall be deemed Developer's approval of the Preliminary Title Report. If Developer notifies HACSM of its disapproval of any Title Exceptions in the Preliminary Title Report, HACSM shall have the right, but not the obligation, to remove any such disapproved Title Exceptions within thirty (30) days after receiving written notice of Developer's disapproval or provide assurances satisfactory to Developer that such disapproved Title Exception(s) will be removed on or before the Property Closing. If HACSM cannot or does not agree to remove any of the disapproved Title Exceptions before the Closing, Developer shall have fifteen (15) days after the expiration of such thirty (30) day period to either give HACSM written notice that Developer elects to proceed with the ground lease of the Property subject to the disapproved Title Exceptions or to give HACSM written notice that Developer elects to terminate this Agreement. Developer's failure to give written notice of its election within such fifteen (15) day period shall be deemed to be an election to proceed with the ground lease of the Property subject to the disapproved Title Exceptions. The condition of title, including all of the Title Exceptions approved (or deemed approved) by Developer as provided herein shall hereinafter be referred to as the "**Condition of Property Title.**" From and after the Effective Date hereof, and continuing until the earlier of (i) the Property Closing, or (ii) termination of this Agreement, HACSM shall not further encumber the Property with additional Title Exceptions without Developer's prior written consent. Developer shall have the right to approve or disapprove any further Title Exceptions reported by the Title Company after Developer has approved the Condition of Property Title (which are not created by Developer). Developer and the Executive Director, on behalf of HACSM, shall have the authority to extend the foregoing fifteen (15) day period by written agreement.

6. FINANCING PLAN FOR THE PROJECT

6.1 Financing Plan. It is contemplated that Developer will finance the Project (the “**Project Financing**”) through a combination of funds from the proceeds of the following:

- (a) Construction Loan. The Construction Loan;
- (b) Tax Credits. Developer equity, consisting of equity raised by the syndication to reputable investors of state and/or federal low-income housing credit and obtained pursuant to 26 U.S.C. §42 (the “**Tax Credits**”);
- (c) HACSM Loan. The HACSM Loan, as more particularly provided in Section 6.2 below;
- (d) AHP Loan. A loan of funds from the Affordable Housing Program in an amount to be set forth in the Final Project Budget;
- (e) Take-Out Loan. The Take-Out Loan;
- (f) Tranche C Loan. The Tranche C Loan; and
- (g) County Loan. A loan of funds from the County of San Mateo, in an amount to be set forth in the Final Project Budget.

Notwithstanding the foregoing, the Project Financing above may be changed upon the mutual agreement of Developer and HACSM.

6.2 HACSM Loan.

(a) Amount of HACSM Loan. Subject to the terms and conditions of this Agreement, HACSM agrees to make a loan to Developer in an amount of up to, but not exceeding Twelve Million Dollars (\$12,000,000) (the “**HACSM Loan**”). The HACSM Loan includes the portions of the First Predevelopment Loan and Second Predevelopment Loan that are allocable to the Project (the “**Predevelopment Portion of HACSM Loan**”). The amount of the Predevelopment Portion of HACSM Loan will be determined by Developer prior to the Property Closing, which amount shall be reasonably acceptable to HACSM. Developer shall cause the Predevelopment Portion of HACSM Loan to be assigned to Developer at the Property Closing. The final amount of the HACSM Loan

shall be determined by the Executive Director, in his or her reasonable discretion, following the Executive Director's approval of Developer's proposed Final Project Budget, and shall be based on an analysis of the Final Project Budget and Developer's ultimate financing, including, without limitation, the Construction Loan, other loans and grants obtained by Developer from public and private sources, and tax credit pricing. Upon the Executive Director's determination of the final amount of the HACSM Loan, the forms of the HACSM Note and HACSM Deed of Trust shall be completed to reflect such amounts and the amount of the Construction Loan. The HACSM Loan shall be evidenced by the HACSM Note, and shall be secured by the HACSM Deed of Trust.

(b) Disbursement of the HACSM Loan. Developer may draw down portions of the undisbursed portions of the HACSM Loan (i.e., the HACSM Loan less the Predevelopment Portion of HACSM Loan) for construction costs of the Project by providing a disbursement request to HACSM, in a form approved by HACSM, not more than once per month. Within thirty (30) days after HACSM's receipt of a complete disbursement request, HACSM shall, subject to the last sentence in this paragraph, disburse the amount requested. All requests for payment shall include written evidence of previously paid invoices, such as receipts from the vendor, and shall also include written evidence that the invoices and receipts are for actual development costs that have been incurred as a result of development of the Project. All requests for payment shall include conditional lien releases (to the extent such disbursement relates to hard costs of construction) covering the work to be reimbursed or paid.

6.3 Applications to CDLAC and TCAC . Within the time set forth in the Schedule of Performance, Developer shall (i)(a) if the Project will be financed through issuance of the Tax-Exempt Bonds, prepare for filing in the name of the California Municipal Finance Authority or other reputable issuer acceptable to HACSM a complete application to CDLAC for an allocation for the Tax-Exempt Bonds; and (b) apply to reputable institutional lenders for the third party credit enhancement or private placement of the Tax-Exempt Bonds in order to provide the Construction Loan and Take-Out Loan for the Project; and (ii)(a) prepare and submit a complete application to TCAC for an allocation of Tax Credits as soon as reasonably practicable following the Effective Date; and (b) apply to reputable institutional investors and syndicators qualified to act as the Investor.

Developer agrees to promptly submit to HACSM all of the following documents at such time as the same are submitted by Developer to TCAC or other applicable body or when such documents are received by Developer, as applicable (any documents

submitted prior to the Effective Date of this Agreement shall also have been submitted by Developer to HACSM and reviewed by HACSM prior to the Effective Date of this Agreement):

(1) A true and correct copy of the preliminary reservation letter from TCAC, a copy of the letter of intent from the Investor reflecting the total amount of the syndication proceeds and the timing of the payment of such proceeds.

(2) A complete copy of the Tax Credit Regulatory Agreement (4 California Code of Regulations § 10340(c)). (As more fully discussed in Section 4.14 of HACSM Regulatory Agreement, should HACSM be prevented by a final order of a court of competent jurisdiction, applicable and binding appellate opinion, or regulatory body with jurisdiction from enforcing, for any reason, the affordability restrictions set forth in this Agreement, HACSM shall, subject to TCAC's consent to the extent such consent is required, be a third-party beneficiary under said agreement and shall have full authority to enforce any breach or default by Developer thereunder in the same manner as though it were a breach or default under this Agreement.)

(3) Complete copies of all correspondence or transmittals from TCAC or other jurisdiction (such as the Internal Revenue Service) containing any notification regarding the Project's noncompliance with applicable provisions of the Tax Credit Program.

6.4 Preliminary Project Budget; Final Project Budget. The Preliminary Project Budget includes, and the Final Project Budget will include, as a condition to HACSM's approval thereof, all of the following: (i) a detailed budget; (ii) a Sources and Uses of Funds Statement; (iii) a Cash Flow Projection; and (iv) a First Year Operating Budget. the Parties acknowledge and agree that (a) the Preliminary Project Budget represents the financing Developer contemplates Developer will obtain for development of the Project, and (b) at such time as Developer has obtained commitments for all of the financing necessary for Developer to develop the Project, Developer shall submit a proposed final budget to HACSM for review and approval. Upon HACM's review and approval of Developer's proposed final budget, which approval shall not be unreasonably withheld, conditioned or delayed, provided such proposed final budget contains all of the elements described in clauses (i) through (iv) of this Section 6.4, and is consistent with this Agreement, such approved, proposed final budget shall be initialed by each of HACSM and Developer, and thereafter shall constitute the Final Project Budget.

6.5 Developer Submittals.

Promptly upon Developer's receipt of a notification of an award of any of the financing described in the Preliminary Project Budget, or otherwise applied for by Developer, Developer shall submit to the Executive Director copies of all of the correspondence and other documentation received in connection with the same.

Within five (5) days after the Effective Date, Developer shall provide to HACSM a copy of Developer's most recently prepared Annual Financial Statement, and a copy of Developer's most recent internally prepared, unaudited financial statement, which shall include a balance sheet, income statement, statement of retained earnings, statement of cash flows, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied.

6.6 Financing Commitments. Not later than the time provided in the Schedule of Performance, Developer shall submit to the Executive Director for review and approval, which approval shall not be unreasonably denied or delayed, preliminary commitments for the Project Financing, including, without limitation, bids received from qualified parties for the Tax Credits as the result of a competitive bidding process.

6.7 Developer Fee. The parties acknowledge and agree that Developer shall not be entitled to any fee for developing the Project except as expressly set forth in the Final Project Budget.

6.8 Cost Savings Obligation. Subject to the requirements of TCAC and other lenders providing loans to the Project that have been approved by HACSM, Developer hereby agrees to provide and pay to HACSM, towards repayment of the HACSM Loan, a "Cost Savings" payment for the Project in an amount to be determined based on the "Audit" (as those terms are described in subparagraph (a) below) to be conducted upon completion of construction of the Project.

(a) Audit to Determine Cost Savings Amount. The actual amount of Cost Savings to be paid to HACSM shall be determined after the Audit, as hereafter described, and the amount of such Cost Savings shall be equal to the amount by which the total sources of permanent financing for the Project (which financing includes, but is not limited to, the HACSM Loan, the Take-Out Loan, the equity raised by the sale of the Tax Credits, and, if applicable, the AHP Loan) exceed the costs of development incurred for the Project (which costs include, but are not limited to, the hard and soft costs incurred by Developer

to perform predevelopment activities and construct the Project (including all permitted deferred developer fee), and the amount spent to reduce the principal balance of the Construction Loan to the principal balance of the Take-Out Loan). prior to the Conversion Date, Developer shall cause its certified public accountant(s) to perform a final audit of the costs of development of the Project in accordance with the requirements of the Tax Credits and generally accepted accounting principles (“GAAP”) and generally accepted auditing standards (herein referred to as “Audit”). If the Audit determines that the total sources of permanent financing for the Project (which financing includes, but is not limited to, the HACSM Loan, the Take-Out Loan, the equity raised by the sale of the Tax Credits, and, if applicable, the AHP Loan) exceed Developer’s total costs to develop the Project (which costs include, but are not limited to, the hard and soft costs incurred by Developer to perform predevelopment activities and construct the Project, and the amount spent to reduce the principal balance of the Construction Loan to the principal balance of the Take-Out Loan), such excess shall be considered the “**Cost Savings**” for the Project.

(b) Cost Savings Payment as Payment of Principal on HACSM Loan. Subject to the requirements of TCAC and other lenders providing loans to the Project that have been approved by HACSM, the Cost Savings for the Project, once determined by the Audit pursuant to Section 6.8(a) above and subject to Section 6.8(c) below, shall be due and paid by Developer to HACSM and allocated and credited as a principal payment on the HACSM Loan, as and when paid. Any Cost Savings above and beyond the amount needed to fully repay the HACSM Loan may be used by Developer in its discretion.

(c) Timing of Payment of Cost Savings. The Cost Savings for the Project shall become due and payable by Developer to HACSM upon the later of (i) sixty (60) days after receipt by Developer of the final Tax Credit equity, and (ii) completion of construction of the Project, as evidenced by HACSM’s issuance of a Release of Construction Covenants.

6.9 Modifications. Notwithstanding the provisions set forth in Sections 3A and 3B of the HACSM Note, the timing and manner of the Partnership’s repayment of the HACSM Note may be modified by the Parties, and such modified terms will be reflected in the final, execution version of the HACSM Note.

7. GROUND LEASE OF PROPERTY

7.1 Agreement. HACSM, subject to the conditions set forth in Section 7.2

below, agrees to ground lease the Property to Developer pursuant to the Ground Lease, and Developer, subject to the conditions set forth in Section 7.3 below, agrees to ground lease the Property from HACSM for a term of ninety-nine (99) years. Subject to each party's reserved rights hereunder, the parties shall cooperate with one another and shall exercise commercially reasonable diligence in an effort to ensure that the conditions precedent set forth in Sections 7.2 and 7.3 are timely satisfied.

7.2 Conditions for HACSM's Benefit. HACSM's obligation to ground lease the Property to Developer shall be subject to satisfaction of all of the following conditions precedent or HACSM's written waiver of such conditions precedent in its sole and absolute discretion:

(a) Organizational Documents. The Executive Director shall have received and approved a copy of such portions of the organizational documents of Developer or Developer's successor-in-interest as the Executive Director deems reasonably necessary to document the power and authority of Developer to perform its obligations set forth in this Agreement. Developer shall have made full disclosure to HACSM of the names and addresses of all persons and entities that have a beneficial interest in Developer.

(b) Insurance. Developer shall have submitted to HACSM and HACSM shall have approved Developer's evidence of the liability insurance required pursuant to Section 10.6 hereof.

(c) Evidence of Project Financing. The Executive Director shall have received and reasonably approved commitments from all Project Financing sources, as evidenced by letters of commitment and/or true and complete copies of loan documents.

(d) General Contractor. The general contractor for the Project (the "General Contractor") shall have been approved by the Executive Director. HACSM hereby approves Devcon Construction, Inc. as the General Contractor.

(e) Construction Contract. HACSM shall have received a true and complete copy of a contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Project at a cost consistent with the costs set forth therefor in the Final Project Budget (the "**Construction Contract**") and the Executive Director shall have approved said Construction Contract.

(f) Final Construction Documents. City shall have approved the Final Construction Documents for the Project and HACSM shall have received a full set thereof.

(g) Completion Bond. If the Construction Lender or the Investor require that a completion bond be posted by the General Contractor, then such completion bond shall name HACSM as a co-obligee.

(h) Completion Guaranty. If the Construction Lender or the purchaser of the Tax Credits require a completion guaranty from Developer, or any Affiliate thereof, then HACSM shall have also received a completion guaranty from Developer in similar form and content.

(i) Building Permit. The Building Permit for the Project shall have issued or shall be ready to issue subject only to the payment of applicable fees, the posting of required security, or both.

(j) Construction to Commence. The Executive Director shall be reasonably satisfied that construction of the Project will commence not later than thirty (30) days after the Property Closing and thereafter will be pursued to completion in a diligent and continuous manner.

(k) Assignment of Final Construction Documents. Developer shall have conditionally assigned to HACSM the Final Construction Documents for the Project by an instrument substantially in the form attached hereto and incorporated herein as Attachment No. 8, which assignment shall be subordinated to any pledge or assignment to the Construction Lender. Developer shall have also delivered to HACSM the written consent of the other party to each such Final Construction Document to said assignment in the form included as part of said Attachment No. 8, including, without limitation, to the use by HACSM of the Final Construction Documents, as well as the ideas, designs, and concepts contained within them.

(l) Assignment of Construction Contract. Developer shall have conditionally assigned to HACSM the Construction Contract by an instrument substantially in the form attached hereto and incorporated herein as Attachment No. 8, including obtaining the consent thereto of the General Contractor, which assignment shall be subordinated to any pledge or assignment to the Construction Lender.

(m) Management Plan. Developer shall have submitted a

comprehensive management plan for the Project to the Executive Director in accordance with Section 7 of the HACSM Regulatory Agreement and the Executive Director shall have reasonably approved the same.

(n) Management Agreement. Developer shall have submitted an executed agreement by and between Developer and MidPen Property Management Corporation, a California nonprofit public benefit corporation, or another property manager approved by HACSM for management of the Project (the “**Management Agreement**”), which Management Agreement shall be consistent with this Agreement and the requirements of Section 7 of HACSM Regulatory Agreement, and the Executive Director shall have reasonably approved the same.

(o) Resident Services Plan. Developer shall have submitted a detailed resident services plan for the Project to the Executive Director, including any specialized supportive services to be provided to targeted populations, and the Executive Director shall have reasonably approved the same.

(p) Resident Relocation Plan. Developer shall have submitted a resident relocation plan which includes, at a minimum: demographic and housing characteristics of those households scheduled to relocate; housing characteristics, including targeted household AMI levels, of units to be developed on the Property; a description of relocation housing resources and relocation assistance; appeals policy; eviction policy; projected dates of relocation; and estimated relocation costs, to the Executive Director and the Executive Director shall have reasonably approved the same.

(q) Request for Notice of Default. Escrow Holder shall be ready to record a request for notice of default pursuant to Civil Code Section 2924(b), requesting that any beneficiaries of liens securing the Project Financing notify HACSM of any default under the instrument creating the lien (the “**Request for Notice**”).

(r) Approval of Proposed Final Project Budget. Developer shall have submitted a proposed Final Project Budget to the Executive Director, and the Executive Director shall have reasonably approved the same.

(s) Documents Executed. (1) Developer shall have duly executed the Ground Lease, Memorandum of Ground Lease, HACSM Deed of Trust, HACSM Note, HACSM Regulatory Agreement, and HACSM/Lender Subordination Agreement, with signatures acknowledged (as applicable) and deposited them into Escrow, and (2) the

Construction Lender shall have duly executed the HACSM/Lender Subordination Agreement, with signature acknowledged, and deposited it into Escrow.

(t) Title Policy. Title Company is prepared to issue its LP-10 loan policy of title insurance naming HACSM as the insured, in a policy amount not less than the principal amount of HACSM Loan, showing Developer as holding leasehold title to the Property and insuring the HACSM Deed of Trust to be a valid lien on the Property subject only to exceptions approved by HACSM (the “**HACSM Title Policy**”).

(u) Total Project Cost. Nothing shall have come to the attention of Developer and/or HACSM to indicate that the Project cannot be completed at a cost consistent with the Final Project Budget and, if there has been such an indication, Developer has provided evidence, reasonably satisfactory to Executive Director, of the availability of funding sources other than HACSM to complete the Project. If Developer becomes aware of any such information, Developer shall promptly give notice thereof to HACSM.

(v) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the Property Closing as though made on and as of that date and, if requested by the Executive Director, HACSM shall have received a certificate to that effect signed by Developer.

(w) No Default. No Event of Default by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer and, if requested by the Executive Director, HACSM shall have received a certificate to that effect signed by Developer.

7.3 Conditions for Developer’s Benefit. Developer’s obligation to ground lease the Property from HACSM shall be subject to satisfaction of all of the following conditions precedent or Developer’s written waiver of such conditions precedent in its sole and absolute discretion:

(a) Termination of SAMCHAI Lease; Quitclaim of Midway Village Improvements. HACSM shall have terminated its ground lease with SAMCHAI, and SAMCHAI shall have quitclaimed all of the Midway Village improvements to HACSM.

(b) Removal or Modification of Deed Restrictions. DTSC shall have terminated or substantially modified any Deed Restrictions applicable to the Property,

such that Developer is able to construct and operate the proposed Project with no additional remediation efforts.

(c) Condition of Property. No material changes shall have occurred after the Effective Date with respect to the condition of the Property.

(d) Evidence of Project Financing. The Developer shall have received commitments for all Project Financing, and the Construction Loan, Tax Credit financing, and Take-Out Loan shall close concurrently with the leasing of the Property.

(e) Total Project Cost. Nothing shall have come to the attention of Developer and/or HACSM to indicate that the Project cannot be completed at a cost consistent with the Final Project Budget and, if there has been such an indication, Developer has provided evidence, reasonably satisfactory to Executive Director, of the availability of funding sources other than HACSM to complete the Project.

(f) Building Permit. The Building Permit for the Project shall have issued or shall be ready to issue subject only to the payment of applicable fees, the posting of required security, or both.

(g) Title Insurance. The Title Company shall be prepared to issue its ALTA leasehold form policy of title insurance, with liability in the amount not less than the total of the equity raised from the sale of the Tax Credits plus the principal amounts of the Take-Out Loan and HACSM Loan, showing leasehold title to the Property and fee title to the improvements located thereon vested in Developer, in the Condition of Property Title, with no other encumbrances or title exceptions, except (i) the Project Documents being recorded at the Property Closing pursuant to the terms of this Agreement, (ii) the lien of the Construction Loan Security Documents, and (iii) the standard conditions and exceptions contained in an ALTA standard owner's policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement (the "**Developer Title Policy**"). The Title Company shall provide HACSM with a copy of Developer Title Policy.

(h) No Default. No Event of Default by HACSM shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by HACSM.

7.4 Developer Right to Terminate. If, by the time provided in the Schedule of

Performance, any of the conditions set forth in Section 7.3 have not been satisfied, or waived by Developer, then Developer, provided that it is not then in material default under this Agreement (subject to the notice and cure provisions of Section 13.1), may terminate this Agreement by giving thirty (30) days' written notice to HACSM.

7.5 HACSM Right to Terminate. If, by the time provided in the Schedule of Performance, any of the conditions set forth in Section 7.2 have not been satisfied, or waived by HACSM, then HACSM, provided that it is not then in material default under this Agreement (subject to the notice and cure provisions of Section 13.1), may terminate this Agreement by giving thirty (30) days' written notice to Developer.

7.6 Waiver of Conditions. The conditions set forth in Section 7.2 are for HACSM's benefit only and the Executive Director may waive all or any part of such rights by written notice to Developer. The conditions set forth in Section 7.3 are for Developer's benefit only and Developer may waive all or any part of such rights by written notice to HACSM.

8. PROPERTY CLOSING; ESCROW EXPENSES

8.1 Property Closing. Upon receipt by the Escrow Holder of (i) the Memorandum of Ground Lease, and (ii) all other funds and documents required to conduct the Property Closing in accordance with this Agreement, and when the conditions precedent described in Section 7.2 have been satisfied, or waived by the Executive Director, and the conditions precedent described in Section 7.3 have been satisfied, or waived by Developer, the Escrow Holder shall take all of the following actions:

(a) Recordation. Escrow Holder shall record the following documents in the Official Records in the following order:

- (i) the Memorandum of Ground Lease;
- (ii) HACSM Regulatory Agreement;
- (iii) the Construction Loan Security Documents;
- (iv) the HACSM Deed of Trust;
- (v) the Request for Notice;

(vi) one or more (as applicable) HACSM/Lender Subordination Agreements; and

(vii) such other documents required to close the Escrow in accordance with this Agreement;

(b) Deliveries to HACSM. Escrow Holder shall deliver to HACSM:

(i) a conformed copy of each of the documents recorded pursuant to paragraph (a) above; and

(ii) HACSM Title Policy;

(c) Deliveries to Developer. Escrow Holder shall deliver to Developer:

(i) a conformed copy of each of the Memorandum of Ground Lease, HACSM Regulatory Agreement, and HACSM Deed of Trust; and

(ii) Developer Title Policy.

8.2 Expenses of Developer. Developer shall pay: (a) any and all documentary transfer taxes and recording fees arising from the leasehold conveyance of the Property from HACSM to Developer by the Ground Lease, (b) the Escrow fee, (c) the premium for the HACSM Title Policy and Developer Title Policy, and (d) all such other costs and expenses related to the Escrow and not expressly provided for herein.

8.3 Instruction to Escrow Holder Regarding Waiver of Transfer Taxes and Recording Fees. The Escrow Holder is hereby instructed to seek such waivers and exemptions from transfer taxes and recording fees as are available pursuant to Revenue and Taxation Code Section 11922 and Government Code Sections 6103 and 27383, respectively.

8.4 Broker's Commissions. Developer represents and warrants to HACSM that Developer has not engaged any broker, agent or finder in connection with this Agreement, and Developer agrees to indemnify, protect, hold harmless, and defend the Indemnitees from any claim by any brokers, agents or finders retained by Developer. HACSM represents and warrants to Developer that HACSM has not engaged any broker, agent, or finder in connection with this Agreement, and HACSM agrees to indemnify, protect,

hold harmless, and defend Developer and its officers, officials, members, employees, representatives, agents, and volunteers from any claim by any brokers, agents, or finders retained by HACSM.

9. OTHER ESCROW INSTRUCTIONS

9.1 Funds in Escrow. All funds received in the Escrow shall be deposited by the Escrow Holder in a general escrow account with any state or national bank doing business in the State of California and reasonably approved by the Executive Director and Developer, and such funds may be combined with other escrow funds of the Escrow Holder. All disbursements shall be made on the basis of a thirty (30) day month.

9.2 Failure to Close. If the Property Closing does not occur on or before the Outside Closing Date, either Party not then in default may, in writing, demand the return of its money, papers, or documents from the Escrow Holder. No demand for return shall be recognized until fifteen (15) days after the Escrow Holder (or the Party making such demand) shall have mailed copies of such demand to the other Party. Objections, if any, shall be raised by written notice to the Escrow Holder and to the other Party within the fifteen (15) day period, in which event the Escrow Holder is authorized to hold all money, papers and documents until instructed by mutual agreement of the Parties or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the Escrow Holder shall conduct the Property Closing as soon as possible.

If objections are raised in the manner provided above, the Escrow Holder shall not be obligated to return any such money, papers or documents except upon the written instructions of both the Executive Director and Developer, or until the Party entitled thereto has been determined by a final decision of a court of competent jurisdiction. If no such objections are made within said fifteen (15) period, the Escrow Holder shall immediately return the demanded money, papers or documents.

9.3 Amendments. Any amendment to these Escrow instructions shall be in writing and signed by the Executive Director or legal counsel to HACSM and Developer. At the time of any amendment, the Escrow Holder shall agree to carry out its duties as the Escrow Holder under such amendment.

9.4 Notices. All Notices from the Escrow Holder to HACSM or Developer shall be given in the manner provided in Section 14.

9.5 Liability. The liability of the Escrow Holder under this Agreement is limited to performance of the obligations imposed upon it under Sections 6, 8 and 9 and such additional general or special instructions as may be prepared by the Escrow Holder and approved and executed by the parties.

10. DEVELOPMENT OF THE PROJECT

10.1 Scope of Development. Developer shall construct the Project on the Property in accordance with all applicable Governmental Requirements, the approved Land Use Entitlements, and the Scope of Development. In the event of any conflict between the approved Land Use Entitlements and the Scope of Development, the approved Land Use Entitlements shall govern and control. Subject to Section 17.12 below, Developer shall commence and complete construction of the Project on the Property by the respective times established therefor in the Schedule of Performance. The Scope of Development shall be deemed to include any plans and specifications submitted to the City and/or HACSM for approval, and shall incorporate or show compliance with all mitigation measures.

10.2 Additional Governmental Permits and Approvals.

(a) Before commencement of construction or development of any buildings, structures or other works of improvement upon the Property by Developer, Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals not included in the Land Use Entitlements which may be required by the City or any other governmental agency affected by or with jurisdiction over such construction, development or work.

(b) The landscaping and finish grading plans shall be prepared by a professional landscape architect or registered civil engineer who may be the same firm as Developer's architect or civil engineer. During the preparation of all drawings and plans, staff of HACSM and Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of drawings, plans and related documents by HACSM. The staff of HACSM and Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to HACSM can receive prompt and speedy consideration. HACSM shall approve, conditionally approve, or deny, in writing, any formally submitted plans within thirty (30) days after submission to HACSM.

(c) Developer shall pay all necessary fees and timely submit to the City Final Construction Documents with final corrections required by the City and by HACSM to obtain a Building Permit.

10.3 Review and Approval of Plans, Drawings, and Related Documents.

(a) Prior to submittal of any design review plans for the Project to the City, Developer shall submit such plans to HACSM for review and approval. HACSM shall advise Developer, in writing, if any proposed submittal of plans or drawings is not substantially complete or not in accordance with HACSM procedures and/or requirements. HACSM shall approve, conditionally approve, or deny, in writing, any such plans within thirty (30) days after submission to HACSM.

(b) If HACSM or the City determines that such a submittal is not substantially complete or not in accordance with procedures, such tender shall not be deemed to constitute a submittal for purposes of satisfying the Schedule of Performance. If Developer desires to make any changes in the construction plans after their approval by HACSM and/or the City, Developer shall submit the proposed change to HACSM and the City for their approval. If the construction plans, as modified by the proposed change, conform to the requirements of this Section 10.3 the Land Use Entitlements, the Scope of Development, and all Governmental Requirements, HACSM shall approve the proposed change in writing within thirty (30) days after submission to HACSM and the City.

10.4 Cost of Development. Developer acknowledges and agrees that all Project Costs shall be borne exclusively by Developer. Developer shall also bear all costs related to discharging the duties of Developer set forth in this Agreement. Developer shall also be responsible for all fees associated with development of the Project, including, but not limited to, school facilities fees and development impact fees.

10.5 Indemnity. Developer shall defend (by counsel reasonably satisfactory to HACSM), assume all responsibility for and hold the Indemnitees harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, attorney's fees and costs), to the extent arising out of the activities and/or performance of Developer or any of Developer's employees, agents, representatives, contractors, or subcontractors under or with respect to (i) this Agreement, (ii) the making of the HACSM Loan; (iii) a claim, demand or cause of action

that any person has or asserts against Developer; (iv) any act or omission of Developer, any of Developer's contractors, subcontractors or material suppliers, engineers, architects or other persons with respect to the Property; or (v) the leasehold, occupancy or use of the Property by Developer, whether such damage shall accrue or be discovered before or after termination of this Agreement. Developer's indemnification obligations pursuant to this Section 10.5 shall not apply to the extent that such claims, suits, or damages arise out of the intentional misconduct, active negligence, or illegal actions of any of the Indemnitees. The obligations and indemnifications in this Section 10.5 shall constitute covenants running with the land.

10.6 Insurance Requirements.

(a) Commencing on the date of the Property Closing and continuing throughout the term of the Ground Lease, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to HACSM's Executive Director, the following policies of insurance:

(i) Commercial General Liability Insurance covering bodily injury, property damage, personal injury and advertising injury written on a per-occurrence and not a claims-made basis containing the following minimum limits: (i) general aggregate limit (including excess coverage) of Five Million Dollars (\$5,000,000); (ii) products-completed operations aggregate limit of Three Million Dollars (\$3,000,000); (iii) personal and advertising injury limit of Three Million Dollars (\$3,000,000); and (iv) each occurrence limit of Three Million Dollars (\$3,000,000). Said policy shall include the following coverages: (i) blanket contractual liability (specifically covering the indemnification clause contained in Section 10.5 hereof); (ii) products and completed operations; (iii) independent contractors; (iv) Owner's broad form property damage; (v) severability of interest; (vi) cross liability; and (vii) property damage liability arising out of the so-called "XCU" hazards (explosion, collapse and underground hazards). The policy shall be endorsed to have the general aggregate apply to this Project only.

(ii) A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California

and which shall indemnify, insure, and provide legal defense for HACSM and Developer against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Developer in the course of carrying out the work or services contemplated in this Agreement, and Employers Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit for all damages arising from each accident or occupational disease.

(iii) A policy of comprehensive automobile liability insurance written on a per-occurrence basis in an amount not less than Two Million Dollars (\$2,000,000) combined single limit covering all owned, non-owned, leased and hired vehicles used in connection with the work; provided, however, that if Developer does not own vehicles it may satisfy this provision through a rider to its general liability coverage for non-owned/hired vehicles.

(b) Commencing on the date of the Property Closing and continuing until HACSM issues a Release of Construction Covenants for the Project, Developer shall procure and maintain, at its sole cost and expense, in a form and content reasonably satisfactory to HACSM's Executive Director, Builder's Risk (course of construction) insurance coverage in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as (i) the City issues a final certificate of occupancy, and (ii) HACSM issues a Release of Construction Covenants, for the Project, and storage and transportation risks. Such insurance shall protect/insure the interests of Developer/owner and all of Developer's contractor(s), and subcontractors, as each of their interests may appear. If such insurance includes an exclusion for "design error," such exclusion shall only be for the object or portion which failed. HACSM shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement

(c) Prior to commencing any activities hereunder, Developer shall cause any general contractor with whom it has contracted for the performance of work on the Property to secure and thereafter to maintain insurance that satisfies all of the requirements of this Section 10.6.

(d) Commencing on the date HACSM issues a Release of Construction Covenants, and continuing throughout the term of the Ground Lease, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to HACSM's Executive Director, the following types of insurance:

(i) Insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in San Mateo County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquakes to the extent generally and commercially available at commercially reasonable rates, if such insurance is generally obtained for affordable housing developments in the Counties of San Mateo and San Francisco. HACSM shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

(ii) Business interruption and extra expense insurance to protect Developer and HACSM covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project caused by loss or damage to, or destruction of, any part of the insurable real property structures or equipment as a result of the perils insured against under the all risk physical damage insurance, covering a period of suspension, delay or interruption of at least twelve (12) months, in an amount not less than the amount required to cover such business interruption and/or extra expense loss during such period.

(iii) Boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance.

(e) The following additional requirements shall apply to all of the above policies of insurance:

(i) All of the above policies of insurance shall be primary insurance and, except the Worker's Compensation, Employer Liability insurance, and automobile liability insurance, shall name the Indemnitees as additional insureds on an ISO Form CG 20:10 (current version) or substantially similar form and not an ISO Form CG 20:09. The insurer shall waive all rights of subrogation and contribution it may have against the Indemnitees and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice to HACSM. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Executive Director. Not later than the Effective Date, Developer shall provide the Executive Director with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders shall be subject to the reasonable approval of the Executive Director.

(ii) The policies of insurance required by this Agreement shall be satisfactory only if issued by companies of recognized good standing authorized to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Executive Director due to unique circumstances.

(iii) The Developer agrees that the provisions of this Section shall not be construed as limiting in any way HACSM's right to indemnification or the extent to which Developer may be held responsible for the payment of damages to any persons or property resulting from Developer's activities or the activities of any person or persons for which Developer is otherwise responsible.

10.7 Remedies for Defaults Re: Insurance. In addition to any other remedies HACSM may have, if Developer commits a default hereunder by failing to provide or maintain any insurance policies or policy endorsements to the extent and within the time

herein required, HACSM may at its sole option, obtain such insurance and invoice the Developer for the amount of said premium. Exercise of the remedy set forth herein, however, is an alternative to other remedies HACSM may have and is not the exclusive remedy for Developer's failure to maintain insurance or secure appropriate endorsements.

10.8 **Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.** If the Project shall be totally or partially destroyed or rendered uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall, subject to the rights of the Construction Lender, promptly proceed to obtain all available insurance proceeds and, to the extent proceeds are available, take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as it existed prior to the casualty, and Developer shall complete or cause to be completed the same as soon as possible thereafter so that the Project can be operated in accordance with this Agreement. HACSM shall cooperate with Developer, at no expense to HACSM, in an effort to obtain any governmental permits required for such repair, replacement, or restoration.

10.9 **Rights of Access.** For purposes of assuring compliance with this Agreement, representatives of HACSM shall have the right of access to the Property without charges or fees, at normal business hours during the construction of the Project (subject to reasonable job safety rules as may be imposed by Developer or the General Contractor), including, but not limited to, the inspection of the work being performed in constructing the Project, so long as they comply with all safety rules. Such representatives of HACSM shall be those who are so identified in writing by the Executive Director of HACSM.

10.10 Compliance with Laws; Compliance with Prevailing Wage Laws.

(a) Compliance with Laws. The Developer shall carry out the construction, development and operation of the Project in conformity with all Governmental Requirements, including without limitation the Approved RAP Amendment and any additional requirements of DTSC, including, without limitation, any existing or future land use covenants required by DTSC, all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

(b) Compliance with Prevailing Wage Laws.

(i) Developer shall carry out the construction through completion of the Project and the overall development of the Property in conformity with all applicable Governmental Requirements relating to the payment of prevailing wages and compliance with prevailing wage rules, including, without limitation, if applicable, the requirements to pay prevailing wages under federal law (the Davis-Bacon Act, 40 U.S.C. Section 3141, et seq., and the regulations promulgated thereunder set forth at 29 CFR Part 1 (collectively, “**Davis-Bacon**”)) and California law (Labor Code Section 1720, et seq.) (“**California Prevailing Wage Law**”). The parties acknowledge that a financing structure utilizing certain federal and/or state funding sources and financing scenarios may trigger compliance with applicable state and federal prevailing wage laws and regulations. Developer shall determine the applicability of federal, state, and local prevailing wage laws based upon the final financing structure and sources of funding of the Project, as approved by the Executive Director.

(ii) Developer shall be solely responsible, expressly or impliedly and legally and financially, for determining and effectuating compliance with all applicable federal, state, and local public works requirements, prevailing wage laws, and labor laws

and standards, and HACSM makes no representation, either legally and/or financially, as to the applicability or non-applicability of any federal, state, and local laws to the construction of the Project. Developer expressly, knowingly, and voluntarily acknowledges and agrees that neither HACSM nor the County have previously represented to Developer or to any representative, agent, or Affiliate of Developer, or any contractor(s) or any subcontractor(s) for the demolition work, construction, or development of the Project, in writing or otherwise, in a call for bids or otherwise, that the work and construction of the Project is (or is not) a “public work,” as defined in Section 1720 of the Labor Code or under Davis-Bacon.

(iii) Developer knowingly and voluntarily agrees that Developer shall have the obligation to provide any and all disclosures or identifications as required by Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation. Developer shall indemnify, protect, pay for, defend, and hold harmless the Indemnitees, with legal counsel reasonably acceptable to HACSM, from and against any and all loss, liability, damage, claim, cost, expense, and/or “increased costs” (including reasonable attorney’s fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (i) the noncompliance by Developer or its contractor with any applicable local, state, and/or federal law or regulation, including, without limitation, any applicable federal and/or state labor laws or regulations (including, without limitation, if applicable, the requirement to pay state and/or federal prevailing wages and hire apprentices); (ii) the implementation of Section 1781 of the Labor Code and/or of Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation; and/or (iii) failure by Developer to provide any required disclosure or identification as

required by Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation. It is agreed by the parties that, in connection with the demolition work, development, and construction (as defined by applicable law or regulation) of the Project, including, without limitation, any and all public works (as defined by applicable law or regulation), Developer shall bear all risks of payment or non-payment of prevailing wages under applicable federal, state, and local law or regulation and/or the implementation of Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, and/or any other similar law or regulation. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Project by Developer.

(iv) "Increased costs," as used in this Section 10.10, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time.

10.11 Anti-Discrimination. Developer for itself and its successors and assigns, agrees, that in the construction of the Project on the Property or other performance under this Agreement, Developer shall not discriminate against any employee or applicant for employment on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code.

10.12 Taxes and Assessments. After the Property Closing, Developer shall pay prior to delinquency all real estate taxes and assessments on the Property so long as Developer retains any interest therein. Notwithstanding the above, Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to Developer in respect thereto, or obtain any available exemptions.

10.13 Right of HACSM to Satisfy Other Liens on the Property(s). At any time prior to the completion of construction, and after Developer has had written notice and has failed after a reasonable time, but in any event not less than forty-five (45) days, to challenge, cure, adequately bond against, or satisfy any liens or encumbrances on the

Property which are not otherwise permitted under this Agreement, HACSM shall have the right but no obligation to satisfy any such liens or encumbrances. Notwithstanding the above, Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to Developer in respect thereto.

10.14 Non-liability of HACSM. Developer acknowledges and agrees that:

(a) HACSM neither undertakes nor assumes any responsibility to review, inspect, supervise, approve (other than for aesthetics) or inform Developer of any matter in connection with the Project, including matters relating to: (i) the Final Construction Documents, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, and/or (iii) the progress of the Project and its conformity with the Final Construction Documents; and Developer shall rely entirely on its own judgment with respect to such matters and acknowledge that any review, inspection, supervision, approval or information supplied to Developer by HACSM in connection with such matters is solely for the protection of HACSM and that neither Developer nor any third party is entitled to rely on it;

(b) HACSM is not a partner, joint venturer, alter-ego, manager, controlling person or other business associate or participant of any kind of Developer and HACSM does not intend to ever assume any such status; and HACSM shall not be deemed responsible for or a participant in any acts, omissions or decisions of Developer;

(c) HACSM shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Property whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Developer or any of Developer's agents, employees, contractors, licensees or invitees; or (iii) from and after the Property Closing any accident on the Property or any fire or other casualty or hazard thereon not caused by the Indemnitees; and

(d) By accepting or approving anything required to be performed or given to HACSM under this Agreement, including any certificate, financial statement, survey, appraisal or insurance policy, HACSM shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by HACSM to anyone.

10.15 Release of Construction Covenants. Promptly after completion of

construction of the Project by Developer in conformity with this Agreement, HACSM shall furnish Developer with a Release of Construction Covenants upon written request therefor by Developer. HACSM shall not unreasonably delay and/or withhold such Release of Construction Covenants. Such Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction required by this Agreement and the Release of Construction Covenants shall so state. The Release of Construction Covenants shall be in the form attached hereto as Attachment No. 14 or such other similar form as to permit it to be recorded in the Official Records. If HACSM refuses or fails to furnish a Release of Construction Covenants for the Project after written request from Developer, HACSM shall, within fifteen (15) days of written request therefor, provide Developer with a written statement of the reasons HACSM refused or failed to furnish the requested Release of Construction Covenants. The statement shall also contain HACSM's opinion of the actions Developer must take to obtain the Release of Construction Covenants. If the reason for such refusal is confined to the immediate unavailability of specific items of materials for landscaping or other minor "punch list" items, HACSM shall issue its Release of Construction Covenants upon the posting of cash, a bond, or other security acceptable to HACSM in HACSM's sole discretion by Developer with HACSM in an amount representing the fair value of the work not yet completed, and Developer shall thereafter complete the "punch list" work with reasonable diligence and in no event later than sixty (60) days after HACSM's issuance of the Release of Construction Covenants. A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage or any insurer of a mortgage securing money loaned to finance the improvements, or any part of this Agreement, or a release of any obligations under this Agreement which survives issuance of the Release of Construction Covenants. A Release of Construction Covenants is not a notice of completion as referred to in the California Civil Code Section 3093.

10.16 Temporary Management/Maintenance Facilities. Notwithstanding anything to the contrary in this Agreement, Developer shall not demolish the management office or maintenance facility until such time as Developer and HACSM have made arrangements reasonably satisfactory to both Developer and HACSM for a temporary management office and maintenance facility adequate to serve all of the tenants in Midway Village. Developer and HACSM contemplate that the existing community facility and one existing Midway Village dwelling unit shall serve as a temporary management office and maintenance facility; provided, however, that Developer and HACSM shall

cooperate in good faith to identify and designate additional space for such purposes if additional space is reasonably necessary.

11. AFFORDABILITY COVENANTS

As more particularly provided in HACSM Regulatory Agreement, for a period of ninety-nine (99) years fifteen (15) dwelling units in the Project shall be rented to households whose incomes do not exceed thirty percent (30%) of the area median income for the County of San Mateo, adjusted for household size (the “**Adjusted AMI**”); (ii) sixty-four (64) of the dwelling units in the Project shall be rented to households whose incomes do not exceed fifty percent (50%) of the Adjusted AMI; (iii) twelve (12) of the dwelling units in the Project shall be rented to households whose incomes do not exceed sixty percent (60%) of the Adjusted AMI; and (iv) fifty-four (54) of the dwelling units in the Project shall be rented to households whose incomes do not exceed eighty percent (80%) of the Adjusted AMI, with all of such dwelling units rented at an affordable rent, pursuant to TCAC regulations. Notwithstanding the foregoing, however, if the Investor reasonably determines prior to the Property Closing that based on the Project’s residual analysis test, maximum rent levels would need to be increased after the fifty-fifth (55th) year of operation, then the Executive Director shall have the right, in his or her sole and absolute discretion, to revise the form of HACSM Regulatory Agreement to permit such increases after the fifty-fifth (55th) year of operation, but only to the extent necessary to satisfy the Investor’s residual analysis test.

12. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 Developer’s Formation, Qualification and Compliance. Developer represents and warrants that (a) it is validly existing and in good standing under the laws of the State of California, (b) it has all requisite authority to conduct its business and own and lease its properties, (c) it has all requisite authority to execute and perform its obligations under this Agreement, (d) this Agreement is binding upon Developer in accordance with its terms, and (e) the individuals executing this Agreement on behalf of Developer are duly authorized to execute and deliver this Agreement on behalf of Developer.

12.2 Litigation. Developer represents and warrants that there are no actions, lawsuits or proceedings pending or, to the best of Developer’s knowledge, threatened against or affecting Developer, the adverse outcome of which could have a material

adverse effect on Developer's ability to perform its obligations under this Agreement.

12.3 HACSM. HACSM represents and warrants that (a) it is validly existing and in good standing under the laws of the State of California, (b) it has all requisite authority to conduct its business and own and lease its properties, (c) it has all requisite authority to execute and perform its obligations under this Agreement, (d) this Agreement is binding upon HACSM in accordance with its terms, and (e) the individuals executing this Agreement on behalf of HACSM are duly authorized to execute and deliver this Agreement on behalf of HACSM. HACSM further represents and warrants that there are no actions, lawsuits, or legal proceedings pending or, to the knowledge of HACSM, threatened, against or affecting HACSM, the adverse outcome of which could have a material adverse effect on HACSM's ability to perform its obligations under this Agreement. As used in this Section 12.3, the phrase "knowledge of HACSM" shall mean and refer to the actual knowledge of the Executive Director, without duty of inquiry or investigation.

13. DEFAULTS AND REMEDIES

13.1 Event of Default. Any of the following events or occurrences with respect to either Party shall constitute a material breach of this Agreement and, after the expiration of any applicable cure period, shall constitute an "**Event of Default**" by such party:

(a) The failure by either Party to pay any amount in full when it is due under this Agreement, if the failure has continued for a period of ten (10) days after the Party entitled to payment demands in writing that the other Party cure that failure.

(b) The failure by either Party to perform any other obligation under this Agreement, if the failure has continued for a period of thirty (30) days after demand in writing that such Party cure the failure, or such shorter time period as may be provided for in one of the other Project Documents. If, however, by its nature the failure cannot reasonably be cured within said time period, such Party may have such longer period of time as is reasonably necessary to cure the failure, provided that such Party commences said cure within said thirty (30)-day period, and thereafter diligently prosecutes said cure to completion.

13.2 No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default

shall not operate as a waiver of any default, or of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

13.3 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other Party.

13.4 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend litigation in any way connected with this Agreement, the prevailing Party in such litigation, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. If either Party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other Party, then the Party so litigating shall be entitled to reasonable attorneys' fees from the other Party to this Agreement. Attorneys' fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, retaining expert witnesses, taking depositions and discovery, and all other necessary costs incurred with respect to such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

13.5 Reimbursement of HACSM. Within thirty (30) days after its receipt of written demand from HACSM, Developer shall reimburse HACSM for all costs reasonably incurred by HACSM (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants) in connection with HACSM enforcement of the Project Documents and all related matters, including, without limitation, the following: (a) HACSM's commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the Parties to any Project Document; and (b) all claims, demands, causes of action, liabilities, losses, and other costs against which any of the Indemnitees is indemnified under the Project Documents. Such reimbursement obligations shall bear interest from the date occurring fifteen (15) days after HACSM makes written demand to Developer at the rate of ten percent (10%) per annum or the maximum legal rate, whichever is less. Such reimbursement obligations shall survive termination of this Agreement.

14. NOTICES

All notices, consents, demands, approvals and other communications (the "Notices") that are given pursuant to this Agreement shall be in writing to the appropriate Party and shall be deemed to have been fully given when delivered, including delivery by reputable commercial delivery service that provides a receipt with the time and date of delivery, or if deposited in the United States mail, certified or registered, postage prepaid, within two (2) days after deposit. All Notices shall be addressed as follows:

If to Developer:	MP Midway Associates I, L.P. c/o MidPen Housing Corporation 303 Vintage Park Drive, Suite 250 Foster City, CA 94404 Attn: Jan Lindenthal Telephone No.: 650-356-2919
with a copy to:	Gubb & Barshay LLP 505 14 th Street, Suite 450 Oakland, CA 94612 Attn: Evan Gross, Esq. Telephone No.: 415-781-6600 ext. 6
If to HACSM:	Housing Authority of the County of San Mateo 264 Harbor Blvd., Building A Belmont, CA 94002-4017 Attn: Executive Director Reference: Midway/Bayshore Redevelopment Project Telephone No.: 650-802-5024

with a copy to

Monali Sheth, Esq.
San Mateo County Counsel's Office
400 County Center, 6th Floor
Redwood City, CA 94063
Telephone No.: 650-363-4697

and to

Rutan & Tucker, LLP
611 Anton, Suite 1400
Costa Mesa, CA 92626
Attention: Allison LeMoine-Bui, Esq.
Telephone No.: 714-641-5100

Addresses for notice may be changed from time to time by notice to the other Party. Notwithstanding that Notices shall be deemed given when delivered, the non-receipt of any Notice as the result of a change of address of which the sending Party was not notified shall be deemed receipt of such Notice.

15. ASSIGNMENT

15.1 Generally Prohibited. Except as otherwise expressly provided to the contrary in this Agreement, Developer shall not assign any of its rights or delegate any of its duties under this Agreement, nor shall any changes occur with respect to the ownership and/or control of Developer, including, without limitation, stock transfers, or transfers, sales or issuances of membership or ownership interests, or statutory conversions, without the prior written consent of the Executive Director, which consent may be withheld in his or her sole and absolute discretion. Any such assignment or delegation without such consent shall, at HACSM's option, be void. Notwithstanding the foregoing, however, (i) Developer may transfer and assign its rights and duties hereunder to the Partnership without obtaining any consent, the Investor may be admitted to the Partnership as a 99.99% Tax Credit limited partner without obtaining any consent, and such Investor may assign its interests as a 99.99% Tax Credit limited partner to a subsequent reputable institutional investor without any consent; (ii) the Investor may remove the general partner for a default under the Partnership Agreement, provided the replacement general partner is reasonably acceptable to HACSM; and (iii) the Partnership may transfer and assign its rights and duties hereunder to MidPen or an Affiliate of MidPen pursuant to the purchase option and/or right of first refusal entered into between

MidPen and the Partnership. For purposes of this Section 15.1, if the Investor transfers to an entity in which the Investor or an Affiliate of the Investor is the administrative general partner or managing member such transferee entity shall be deemed to be a “reputable institutional investor.” This Section 15.1 shall not be applicable to the leasing of individual dwelling units to income eligible households in accordance with the HACSM Regulatory Agreement.

15.2 Release of Developer. Upon any such assignment made in compliance with Section 15.1 above which is evidenced by a written assignment and assumption agreement in a form approved by HACSM’s counsel, the transferor shall be released from any liability under this Agreement arising from and after the effective date of such assignment.

16. ADMINISTRATION

Following approval of this Agreement by HACSM, this Agreement shall be administered and executed on behalf of HACSM by the Executive Director. The Executive Director shall have the authority to issue interpretations, waive terms and conditions, enter into subordination agreements with public funding sources where the public funding source’s regulations require such subordination, and enter into implementing agreements and amendments of this Agreement (including, without limitation, to the Schedule of Performance) on behalf of HACSM provided that such actions do not substantially change the uses or development permitted on the Property, materially add to the costs or obligations, increase the risk of liability, or impair the rights or remedies, of HACSM provided herein, or materially decrease the revenues or other compensation to be received by HACSM hereby. All other waivers or amendments shall require the formal consent of the Board of Directors of HACSM.

17. MISCELLANEOUS

17.1 Counterparts. This Agreement may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

17.2 Prior Agreements; Amendments. This Agreement contains the entire agreement between HACSM and Developer with respect to the Project and the Property, and all prior negotiations, understandings and agreements are superseded by this Agreement. No modification of this Agreement (including waivers of rights and conditions) shall be effective unless in writing and signed by the Party against whom

enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. HACSM agrees to consider in good faith making reasonable modifications to this Agreement that are necessary to finance the development of the Project.

17.3 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California, without regard to conflict of law principles.

17.4 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against HACSM, service of process on HACSM shall be made by personal service upon the Executive Director or in such other manner as may be provided by law. In the event that any legal action is commenced by HACSM against Developer, service of process on Developer shall be made in such manner as may be provided by law.

17.5 Severability of Provisions. No provision of this Agreement that is held to be unenforceable or invalid shall affect the remaining provisions if and to the extent that the primary purposes of this Agreement can still be accomplished without materially impairing the rights or increasing the obligations or risks of each Party, as reasonably determined by that Party, and to that extent all provisions of this Agreement are hereby declared to be severable.

17.6 Interpretation. Both Parties have participated in the drafting of this Agreement and any ambiguities in this Agreement shall not be construed for or against either Party on account of the authorship or presumed authorship hereof. Article and section headings are included in this Agreement for convenience of reference only and shall not be used in construing this Agreement. Any defined term used in the plural in this Agreement shall refer to all members of the relevant class and any defined term used in the singular shall refer to any of the members of the relevant class. References herein to Articles, Sections, and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The terms “including” and “include” mean “including (include) without limitation.”

17.7 Accounting Principles. Any accounting term used and not specifically defined in this Agreement shall be construed, and all financial data required to be

submitted under this Agreement shall be prepared, in conformity with generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to HACSM.

17.8 Attachments Incorporated. All attachments to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

17.9 Time of the Essence. Time is of the essence of this Agreement.

17.10 Warranty Against Payment of Consideration. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

17.11 Non-liability of HACSM or County Officials and Employees. No member, director, officer, employee, or volunteer of HACSM or the County shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by HACSM or for any amount which may become due to Developer or successor, or on any obligation under the terms of this Agreement.

17.12 Force Majeure. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; litigation beyond the reasonable control of a Party; unusually severe weather; inability, despite commercially reasonable efforts, to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier beyond the reasonable control of a Party; acts of the other Party; acts or the failure to act of any public or governmental entity (except that acts or the failure to act of HACSM shall not excuse performance by HACSM); or any other acts or causes beyond the reasonable control of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Force Majeure shall serve also to extend the time by which any condition, for the benefit of either Party, shall be satisfied under this Agreement. Notwithstanding any provision of this Agreement to the contrary, in no event shall adverse market conditions, interest rates, the

lack of funding or difficulty obtaining the financing necessary to complete the Project constitute grounds of enforced delay pursuant to this Section.

17.13 Nondiscrimination Covenants. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 Property. The foregoing covenants shall run with the land.

Developer shall refrain from restricting the rental, sale or lease of the Property on any of the bases listed above in this Section 17.13. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

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

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

(c) In contracts: “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

The covenants established in this Section 17.13 shall, without regard to technical classification and designation, be binding for the benefit and in favor of HACSM and its successors and assigns, and shall remain in effect in perpetuity.

17.14 Consents and Approvals. Unless otherwise expressly set forth in this Agreement, any consents or approvals to be given by a Party under this Agreement shall not be unreasonably withheld, conditioned or delayed.

17.15 Third Party Beneficiary. The County is an intended third party beneficiary of this Agreement and shall have the right, but not the obligation, to enforce its terms

including the rights and benefits that HACSM has under this Agreement. Except as provided in this Section 17.15, no person or entity other than HACSM, Developer, and the County, and the permitted successors and assigns of each of them, shall be authorized to enforce the provisions of this Agreement.

17.16 Termination. This Agreement shall automatically terminate upon HACSM's issuance of a Release of Construction Covenants for the Project. Such termination shall not terminate any indemnification obligations set forth in this Agreement, or any other provisions in this Agreement which are expressly stated either in this Agreement or in the HACSM Note to survive termination of this Agreement.

[End of Agreement – Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

“HACSM”

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO,
a public body, corporate and politic

By: _____
Raymond Hodges, Executive Director

“Developer”

MP MIDWAY ASSOCIATES I, L.P., a California limited
partnership

By: MP Midway I, LLC, a California limited liability
company,
Its: General partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit
corporation
Its: Sole member/manager

By:  _____
Jan M. Lindenthal, Assistant Secretary

ATTACHMENTS

- 1 - Legal Description of Midway Village Property
- 2 - Legal Description of Bayshore Childcare Property
- 3 - Legal Description of Park Property
- 4 - Legal Description of Property
- 5 - Site Map
- 6 - Schedule of Performance
- 7 - Scope of Development
- 8 - Form of Assignment of Contract
- 9 - Form of the HACSM Note
- 10 - Form of the HACSM Deed of Trust
- 11 - Preliminary Project Budget
- 12 - Form of Ground Lease
- 13 - Form of HACSM Regulatory Agreement
- 14 - Form of Release of Construction Covenants

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF MIDWAY VILLAGE PROPERTY

The land referred to is situated in the County of San Mateo, City of Daly City, State of California, and is described as follows:

TRACT I:

PARCEL ONE:

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38 and 40,

As designated on the Map entitled, "Midway Village", which Map was filed in the Office of the Recorder of the County of San Mateo, State of California, on July 26, 1976 in Book 91 of Maps at Pages 44, 45, 46, 47 and 48, inclusive.

EXCEPTING THEREFROM the improvements as described in the Deed to Samchai, Inc., a California corporation, recorded June 12, 2013, Series No. 2013-088123, San Mateo County Records.

PARCEL TWO:

A perpetual easement to construct, operate, maintain and repair a sewer line over a following Parcel.

Beginning at a point on the center line of Main Street, distant thereon South 70° 25' East 840.30 feet from the point of intersection of said center line with the Southerly production of the Easterly line of Schwerin Street, said Streets are shown upon "Map of the Partridge Tract, Visitation Valley, San Mateo County", filed in Book 12 of Maps, Page 76, in the Office of the Recorder of the County of San Mateo, State of California, running thence South 70° 25' East along said center line of Main Street 263 feet; thence South 15° 46' West 10.02 feet to a line parallel with perpendicularly distant 10 feet, Southerly from said center line of Main Street; thence North 70° 25' West parallel with said center line 263.67 feet to a point perpendicularly distant 840.30 feet, Easterly from

said Easterly line of Schwerin Street; thence North 19° 35' East 10 feet to the point of beginning,

Except all existing easements and servitudes, which are not to be disturbed.

PARCEL THREE:

A perpetual easement to construct, operate, maintain and repair a sewer line over a following Parcel.

Beginning at a point on the center line of Main Street, distant thereon South 70° 25' East 730 feet from the point of intersection of said center line with the Southerly production of the Easterly line of Schwerin Street as said Streets are shown upon "Map of the Partition of the Partridge Tract, Visitacion Valley, San Mateo County", filed in Book 12 of Maps at Page 76, in the Office of the Recorder of the County of San Mateo, State of California; running thence North 19° 35' East parallel with said Easterly line of Schwerin Street 10 feet; thence South 70° 25' East parallel with said center line of Main Street 422.63 feet; thence South 15° 46' West 20.04 feet to a point perpendicularly distant 10 feet Southerly from said center line of Main Street; thence North 70° 25' West 50 feet; thence North 15° 46' East 10.02 feet to the center line of Main Street; thence North 70° 25' West along said center line 373.30 feet to the point of beginning.

Except all existing easements and servitudes, which are not to be disturbed.

PARCEL FOUR:

A perpetual easement to construct, operate, maintain and repair a sewer line over a following Parcel.

Beginning at a point on the center line of Main Street, distant thereon South 70° 25' East 1153.30 feet from the point of intersection of said center line with the Southerly production of the Easterly line of Schwerin Street as said Streets are shown upon "Map of the Partition of the Partridge Tract, Visitacion Valley, San Mateo County", filed in Book 12 of Maps, Page 76, in the Office of the Recorder of the County of San Mateo, State of California; running thence North 15° 46' East 10.02 feet to a point perpendicularly distant 10 feet Northerly from said center line of Main Street; thence

South 70° 25' East 226.34 feet; thence South 55° 42' East 406.24 feet to the Northerly production of the Easterly line of the lands described in the Deed from Anna Kennel to Pacific Bone, Coal and Fertilizing Company, dated January 28, 1929, recorded February 19, 1929, in Book 395, Page 282, Official Records; thence South 19° 35' West along said Easterly line so produced, 10.34 feet to the center line of Main Street; thence along said center line North 55° 42' West 407.58 feet and North 70° 25' West 222.68 feet; thence South 19° 35' West 10 feet; thence North 70° 25' West 1.33 feet; thence North 15° 46' East 10.02 feet to the point of beginning.

Except all existing easements and servitudes, which are not to be disturbed.

PARCEL FIVE:

A perpetual easement to construct, operate, maintain and repair a sewer line over a following Parcel.

Beginning at a point on the center line of Main Street, as shown upon the Map above referred to; distant thereon South 70° 25' East 1155.30 feet from its intersection with the Easterly line of Schwerin Street; running thence South 70° 25' East along said center line of Main Street 170 feet; thence South 19° 35' West 10 feet; thence North 70° 25' West 170 feet; thence North 19° 35' East 10 feet to the point of beginning.

Except all existing easements and servitudes, which are not to be disturbed.

PARCEL SIX:

A perpetual easement to construct, operate, maintain and repair a sewer line over a following Parcel.

Beginning at a point on the center line of Main Street, distant thereon South 70° 25' East 1325.30 feet from the point of intersection of said center line with the Southerly production of the Easterly line of Schwerin Street, said Streets are shown upon "Map of the Partridge Tract, Visitacion Valley, San Mateo County", filed in Book 12 of Maps, Page 76, in the Office of the Recorder of the County of San Mateo, State of California; running thence South 70° 25' East along said center line of Main Street 52.68 feet and South 55° 42' East 407.58 feet to the most Easterly corner of lands described in Deed

from Anna Kennel, also known as Mrs. Joseph Kennel, a widow, to Pacific Bone, Coal and Fertilizing Company, a corporation, dated January 28, 1929 and recorded February 19, 1929 in Book 395, Page 282, Official Records; thence South 19° 35' West 10.34 feet to a point perpendicularly distant 10 feet Southerly from said center line of Main Street; thence parallel with said center line North 55° 42' West 408.92 feet and North 70° 25' West 51.39 feet to a point perpendicularly distant 1325.30 feet Easterly from said Easterly line of Schwerin Street; thence North 19° 35' East 10 feet to the point of beginning,

Except all existing easements and servitudes, which are not to be disturbed.

PARCEL SEVEN:

A perpetual easement to construct, operate, maintain and repair a sewer line over a following Parcel.

Beginning at a point on the center line of Main Street, distant thereon South 55° 42' East 407.58 feet from the first angle point in the center of Main Street Easterly from Schwerin Street (said point of beginning also being at the most Easterly corner of lands, described in Deed from Anna Kennel, also known as Mrs. Joseph Kennel, a widow to Pacific Bone, Coal and Fertilizing Company, a corporation, dated January 28, 1929 and recorded February 19, 1929 in Book 395, Page 282, Official Records; running thence North 19° 35' East along the Northerly production of the Easterly line of said property described in the Deed above referred to, a distance of 10.34 feet to a point perpendicularly distant 10 feet Northerly from said center line of Main Street; thence South 55° 42' East parallel with said center line 186.12 feet to a point on the Westerly right-of-way line of Bay Shore Highway (Route 68, State Highway); thence Southerly along the said Westerly right-of-way line of said Bay Shore Highway along the arc of a curve to the left, the center of which bears North 78° 52' 28" East 1485 feet from the last mentioned point, with a radius of 1485 feet, a central angle of 1° 06' 38", a distance of 28.783 feet to a line parallel with and perpendicularly distant 10 feet Southwesterly from the center line of said Main Street; thence North 55° 42' West parallel with said center line of Main Street 201.56 feet to said Easterly line of the lands described in the Deed above referred to; thence North 19° 35' East along said Easterly line 10.34 feet to the point of beginning;

Except all existing easements or servitudes, which are not to be disturbed.

PARCEL EIGHT:

A perpetual easement for drainage purposes over the following described Parcel:
Beginning at a point which is perpendicularly distant 730 feet Easterly from the Easterly line of Schwerin Street and also perpendicularly 344.45 feet Northerly from the Northerly line of Main Street, as said Schwerin and Main Streets are shown on "Map of the Partridge Tract, Visitacion Valley, San Mateo County", filed in Book 12 of Maps, Page 76, in the Office of the Recorder of the County of San Mateo, State of California; running thence North 19° 35' East parallel with said Easterly line of Schwerin Street 50 feet; thence South 70° 25' East parallel with said Northerly line of Main Street 236 feet; thence South 19° 35' West parallel with said Easterly line of Schwerin Street 50 feet; thence North 70° 25' West 236 feet to the point of beginning,

Except all existing easement and servitudes, which are not to be disturbed, and the right of Pacific Gas and Electric Company to maintain and operate the existing Railway Spur Tract, and appurtenances thereto, including the underground control cable and 2-inch water line.

APN: 005-330-020

005-330-030

005-330-040

005-330-050

005-330-060

005-330-070

005-330-080

005-330-090

005-330-100

005-330-110

005-330-120

005-330-130

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005-330-290
005-330-300
005-330-310
005-330-340
005-330-350
005-330-360
005-330-370
005-330-380
005-330-400

TRACT II:

Lot 32 as designated on the Map entitled, "Midway Village", which Map was filed in the Office of the Recorder of the County of San Mateo, State of California, on July 26, 1976, in Book 91 of Maps, Pages 44, 45, 46, 47 and 48, inclusive.

APN: 005-330-320

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF BAYSHORE CHILDCARE PROPERTY

Real property in the City of Daly, County of San Mateo, State of California, described as follows:

LOT 32 AS DESIGNATED ON THE MAP ENTITLED, "MIDWAY VILLAGE", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON JULY 26, 1976 IN BOOK 91 OF MAPS, PAGES 44, 45, 46, 47 AND 48, INCLUSIVE.

APN: 005-330-320-2

ATTACHMENT NO. 3

LEGAL DESCRIPTION OF PARK PROPERTY

The land referred to is situated in the County of San Mateo, City of Daly City, State of California, and is described as follows:

PARCEL ONE:

Parcel 39 as described in that certain map entitled "Map of Midway Village", recorded on July 26, 1976 in Volume 91 at Page 44 of Maps of the County of San Mateo.

APN: 005-330-390

PARCEL TWO:

Parcel 33 as described in that certain map entitled "Map of Midway Village", recorded on July 26, 1976 in Volume 91 at Page 44 of Maps of the County of San Mateo.

APN: 005-330-330.

ATTACHMENT NO. 4

LEGAL DESCRIPTION OF PROPERTY



July 17, 2020
BKF No. 20181024
Page 1 of 1

Exhibit "A"
Legal Description

PARCEL PROPERTY
47 Midway Drive, Daly City, CA

Real property in the City of Daly City, County of San Mateo, State of California, described as follows:

Being a portion of Lots 18, 32, 33, 38, 39 and 40, as said lots are shown on that certain Map, entitled "Map of Midway Village", filed for record on July 26, 1976 in Book 91 of Maps at Pages 44 through 48 inclusive, Records of San Mateo County, more particularly described as follows:

BEGINNING at the northeasterly corner of said Lot 39 of said Map;

Thence leaving said corner and along the southeasterly line of said Lot 39 and Lots 33 and 40 of said Map, South 20°35'05" West, 528.50 feet to the northeasterly line of said Lot 40;

Thence along said northeasterly line, South 69°24'55" East, 110.30 feet to the southeasterly line of said Lot 40;

Thence along said southeasterly line, South 20°35'05" West, 18.91 feet to the southwesterly line of said Lot 40;

Thence along said southwesterly line, North 69°23'02" West, 249.25 feet;

Thence leaving said southwesterly line of said Lot 40, the following courses and distances:

North 20°35'05" East, 11.36 feet;

North 69°24'55" West, 137.57 feet;

North 20°35'05" East, 392.50 feet;

North 69°24'55" West, 11.50 feet;

North 20°35'05" East, 218.43 feet to the northeasterly line of said Lot 39;

Thence along said northeasterly line, South 54°48'55" East, 297.63 feet to the point of **BEGINNING**.

Containing an area of 3.772 acres, more or less.

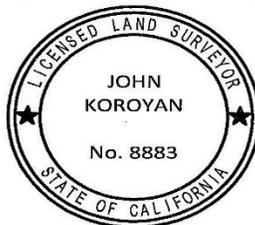
As shown on EXHIBIT "B" plat attached hereto and made a part hereof.

This legal description was prepared by me, or under my direct supervision.

FOR REVIEW AND APPROVAL

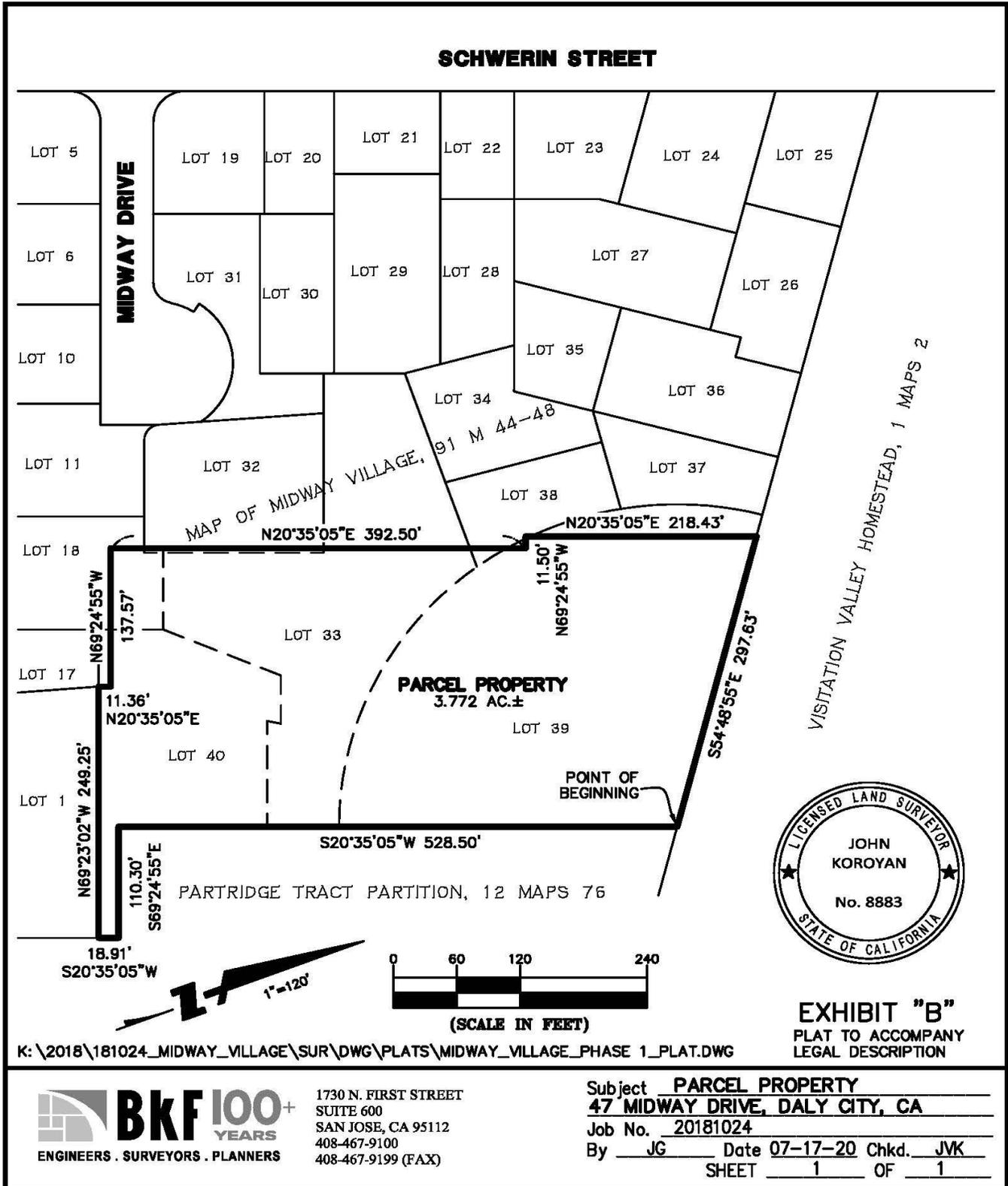
John Koroyan
P.L.S. No. 8883

Date



ATTACHMENT NO. 5

SITE MAP



K: \2018\181024_MIDWAY_VILLAGE\SUR\DWG\PLATS\MIDWAY_VILLAGE_PHASE 1_PLAT.DWG



1730 N. FIRST STREET
SUITE 600
SAN JOSE, CA 95112
408-467-9100
408-467-9199 (FAX)

Subject PARCEL PROPERTY
47 MIDWAY DRIVE, DALY CITY, CA
Job No. 20181024
By JG Date 07-17-20 Chkd. JVK
SHEET 1 OF 1

ATTACHMENT NO. 6

SCHEDULE OF PERFORMANCE

ITEM OF PERFORMANCE		TIME FOR PERFORMANCE
1.	Developer submits applications for financing including to County of San Mateo	Next available notice of funding availability rounds after Effective Date
2.	Developer submits application to TCAC for a preliminary reservation of 4% Tax Credits and tax exempt bonds	Next available TCAC round immediately following Effective Date.
3.	If the first application for 4% Tax Credits is not successful, Developer submits second application for 4% Tax Credits and tax-exempt bonds	Next available TCAC round immediately following disapproval of previous application.
4.	Developer prepares and submits Developer's proposed Final Project Budget for HACSM approval	Within 120 days after receipt of tax credit allocation from TCAC
5.	HACSM approves or disapproves Developer's proposed Final Project Budget	Within 30 days after receipt of Developer's proposed Final Project Budget
6.	Developer revised proposed Final Project Budget, as necessary to obtain HACSM approval.	Within 15 days after any disapproval by HACSM
7	Developer submits to the City and obtains approval of Final Construction Documents	Within 180 days after Developers receives allocation of Tax Credits, but in all events prior to the Property Closing.
8.	Developer submits to Executive Director and obtains Executive Director approval of Resident Relocation Plan	Prior to Property Closing.
9.	Occurrence of the Property Closing	Upon satisfaction or waiver of conditions set forth in Section 7.2, but in no event later than the Outside Closing Date.

ITEM OF PERFORMANCE		TIME FOR PERFORMANCE
10.	Developer obtains Building Permit and commences construction of the Project.	By the earliest of (i) 30 days after Closing, (ii) 194 days after receipt of allocation of Tax Credits from TCAC, or (iii) the Outside Construction Commencement Date
11.	Developer submits to Executive Director and obtains Executive Director approval of the Management Agreement, Management Plan, and Resident Services Plan	Not less than 90 days prior to anticipated completion date.
12.	Developer completes construction of the Project	Within 30 months after commencement.
13.	Developer provides quarterly progress reports to HACSM.	Until Project is fully leased-up

It is expressly understood and agreed by the Parties that the foregoing schedule of performance is subject to all of the terms and conditions set forth in the text of the Agreement including, without limitation, extension due to Force Majeure. Times of performance under the Agreement may be extended by request of any Party memorialized by a mutual written agreement between the Parties, which agreement may be granted or denied in the non-requesting Party's sole and absolute discretion (subject to events of force majeure set forth in this Agreement).

ATTACHMENT NO. 7

SCOPE OF DEVELOPMENT

1. Proposed improvements.

The Project includes development of 147 Affordable Units in two 4-story multifamily residential buildings (Building A and A2). Building A will include a garage with 371 parking spaces that will serve residents in Phase I and Phase II, as well as on-site property management and services staff. The Project also includes development of new streets, a playground, and landscaping. Indoor amenities will include a community room, an after school program classroom, and office space for management, maintenance and resident services providers. Eighteen (18) of the Affordable Unit shall constitute the eighteen (18) affordable units required to be constructed pursuant to Section 1.9 of that certain Memorandum of Understanding among Bayshore Elementary School District, the County of San Mateo, The Housing Authority of the County of San Mateo and the City of Daly City, dated March 31, 2016

2. On-Site Relocation

No relocation of existing residents is required prior to completion of construction of the Project improvements. Upon completion of the Project improvements, Developer shall relocate 60 households from the existing Midway Village into a portion of the Affordable Units. Demolition of the vacated Midway Village units will occur in Phase 2.

3. Populations to be Served

The Project will serve families whose incomes range between 30% and 80% of AMI, with a substantial portion of the units restricted for families whose incomes range between 30% and 60% of AMI. The specific affordability mix is set forth in the HACSM Regulatory Agreement, along with applicable preferences.

4. Property Management

HACSM and Developer contemplate that approximately six months prior to completion of the Project, MidPen will commence management services for all of the existing units within Midway Village, and that MidPen will also be responsible for all property management services for the Property.

5. Resident Services Plan

Developer will provide a number of resident services at Phase 1 including, but not limited to: services for youth including after school and summer programs, services for Transition Aged Youth, in partnership with Unity Care Group or a similar organization. Developer will provide all services set forth in its approved resident services plan.

ATTACHMENT NO. 8

ASSIGNMENT OF ARCHITECTURAL AGREEMENTS

[See following document]

**ASSIGNMENT OF ARCHITECTURAL AGREEMENTS
AND PLANS AND SPECIFICATIONS**

FOR VALUE RECEIVED, the undersigned, MP MIDWAY ASSOCIATES I, L.P., a California limited partnership (“**Developer**”), assigns to HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO, a public body, corporate and politic (“**HACSM**”), all of its right, title and interest in and to:

1. All architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “**Architectural Agreements**”), and

2. All plans and specifications, blueprints, sketches, shop drawings, working drawings, landscape plans, utilities plans, soils reports, noise studies, environmental assessment reports, and grading plans, and all amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively, “**Plans and Specifications**”), heretofore or hereafter entered into or prepared by any architect, engineer or other person or entity (collectively, “**Architect**”), for or on behalf of Developer in connection with the Real Property described on Exhibit “A” attached hereto. The Plans and Specifications, as of the date hereof, are those which Developer have heretofore, or will hereafter deliver to HACSM. The Architectural Agreements include, but are not limited to, the architectural agreement or contract between _____ and _____, dated _____.

Developer, and Architect by executing the Consent to this assignment, acknowledges that by accepting this Assignment, HACSM does not assume any of Developer’s obligations under the Architectural Agreements and the Plans and Specifications, including, but not limited to, the obligation to pay for the preparation of the Architectural Agreements and the Plans and Specifications, unless and until HACSM shall exercise its rights hereunder.

Developer represents and warrants to HACSM that: (a) no default by Developer, or event which would constitute a default by Developer after notice or the passage of time, or both, exists with respect to said Architectural Agreements, and (b) all copies of the Architectural Agreements and Plans and Specifications delivered to HACSM are complete and correct. Developer has not assigned any of its rights under the Architectural

Agreements or with respect to the Plans and Specifications. Notwithstanding the foregoing, this Assignment shall be subordinated to any assignment required to be made by Developer to the "Construction Lender" (as that term is defined in that certain Affordable Housing and Property Disposition Agreement entered into by and between HACSM and Developer on or about _____ (the "AHPDA")) at the "Property Closing" (as that term is defined in the AHPDA). Developer agrees not to further grant, assign, sell, pledge, transfer, mortgage or otherwise encumber Developer's interest in the Architectural Agreements and/or the Plans and Specifications, except to HACSM and the Construction Lender, so long as this assignment is in effect.

Developer hereby irrevocably constitutes and appoints HACSM as Developer's true and lawful attorney-in-fact with the power and authority, including full power of substitution, to demand, receive, and enforce Developer's rights with respect to the Architectural Agreements and the Plans and Specifications, to give appropriate receipts, releases and satisfactions for, and on behalf of, Developer and to do any and all acts in the name of Developer or in the name of HACSM with the same force and effect as if done by Developer. This power of attorney is a power coupled with an interest and cannot be revoked.

Upon the occurrence of a default under the HACSM Note, HACSM Deed of Trust or any other loan document, HACSM shall have the right, but not the obligation, at any time, in its own name or in the name of Developer, or otherwise, to take such action as HACSM may at any time or from time to time determine to be necessary or desirable in order to cure any default by Developer under the Architectural Agreements or any other agreement entered into with Architect in connection with the Plans and Specifications or to protect the rights of Developer thereunder. HACSM shall not incur any liability if any action taken by HACSM or on its behalf in good faith, pursuant to the foregoing sentence, shall prove to be, in whole or in part inadequate or invalid, and Developer hereby indemnifies and agrees to hold HACSM harmless from and against any and all loss, claim, demand, cost, liability, damage or expense, including, without limitation, attorneys' fees and expenses (including the fees and costs of HACSM's in-house counsel and legal staff) in connection with any such action or actions, except to the extent caused by HACSM's negligence or willful misconduct.

This assignment shall be governed by the laws of the State of California, except to the extent that federal laws preempt the laws of the State of California, and Developer consents to the jurisdiction of any federal or state court within the State of California

having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This assignment shall bind the successors and assigns of Developer and inure to the benefit of the successors and assigns of HACSM.

The attached Architect's/Engineer's Consent and Exhibit "A" are incorporated by reference.

Executed by _____ on _____, 20__.

"Developer"

MP MIDWAY ASSOCIATES I, L.P., a California limited partnership

By: MP Midway I, LLC,
a California limited liability company,
Its: general partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit corporation,
Its Sole member/manager

Date: _____, 20__

By: _____
Jan M. Lindenthal
Assistant Secretary

"HACSM"

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO, a public body, corporate and politic

Date: _____, 20__

By: _____
Raymond Hodges, Executive Director

ARCHITECT'S/ENGINEER'S CONSENT

The undersigned Architect has prepared the Plans and Specifications, hereby consents to the above assignment and represents that Architect has received payment in full for services rendered to date for the Plans and Specifications and accordingly hereby waives Architect's lien rights, if any, with respect to the services rendered to date for the Plans and Specifications, and subordinates Architect's lien rights, if any, in the Plans and Specifications for any future services rendered to the lien of HACSM. Architect also agrees that in the event of any breach by Developer under the Architectural Agreement or any other agreement entered into with Architect in connection with the Plans and Specifications, Architect shall give written notice thereof to HACSM and HACSM shall have the right, but not the obligation, to cure same within sixty (60) days following receipt of such written notice.

Architect also agrees that in the event of default by Developer under the HACSM Note, HACSM Deed of Trust or any other loan documents, Architect, at Developer's request, shall continue performance under the Architectural Agreement or any other agreement entered into with Architect in connection with the Plans and Specifications in accordance with the terms hereof, provided that Architect shall be reimbursed in accordance with the Architectural Agreement or any other agreement entered into with Architect in connection with the Plans and Specifications for all services rendered on HACSM's behalf.

Architect certifies to HACSM that (i) the Plans and Specifications have been approved by all appropriate local governmental authorities, and that the Plans and Specifications are the plans and specifications to be used in actual construction of the Project, and (ii) the Architectural Agreement or any other agreement entered into with Architect in connection with the Plans and Specifications is in full force and effect, no defaults exist thereunder, and all conditions to the effectiveness or continuing effectiveness thereof required to be satisfied as of the date hereof have been satisfied.

Executed on _____, 20__.

“Architect”

_____,
a _____

By: _____

Name: _____

Its: _____

Architect’s Address:

Phone No.: (_____) _____

Fax No.: (_____) _____

EXHIBIT "A"

PROPERTY DESCRIPTION

ATTACHMENT NO. 9

HACSM NOTE

[See following document]

HACSM PROMISSORY NOTE

\$ _____
_____, 20__

San Mateo, California

FOR VALUE RECEIVED, MP MIDWAY ASSOCIATES I, L.P., a California limited partnership ("**Borrower**"), as maker and obligor, promises to pay to the **HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO**, a public body, corporate and politic ("**HACSM**"), as holder and beneficiary, or order, at HACSM's office at 264 Harbor Boulevard, Building A, Belmont, California 94002-4017, or such other place as HACSM may designate in writing, the sum of (a) _____ Dollars (\$ _____), or so much thereof as may be disbursed hereunder ("**Note Amount**"), and (b) all costs and expenses payable hereunder, in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts. The Note Amount includes _____ (\$ _____) of one or more predevelopment loans allocated to the "Project" (as that term is defined in Section 1 below), which predevelopment loans were previously disbursed for Project costs and which were assigned by MidPen Housing Corporation to Borrower concurrently herewith.

1. Agreement. This HACSM Promissory Note ("**Note**") is given in accordance with that certain Affordable Housing and Property Disposition Agreement executed by HACSM and Borrower, dated as of _____ ("**Agreement**"), which Agreement provides for Borrower to develop and operate on certain real property owned in fee by HACSM and located at _____ (the "**Property**") an affordable residential rental housing development (the "**Project**"). Until such time as the Agreement terminates, the rights and obligations of Borrower and HACSM under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail. An "Event of Default" by Developer under any of the provisions of the Agreement (until such time as the Agreement terminates), and/or a default under any and all attachments and all breakout documents executed, attested and/or recorded in implementation of the Agreement, including, without limitation, the HACSM Deed of Trust, HACSM Regulatory Agreement, and Ground Lease, or the income and/or rent restrictions as set forth in the regulatory agreement which may be required to be recorded against the Property with

respect to the issuance of low income housing tax credits for the Project and/or the regulatory agreement with the institutional lender responsible for placing tax-exempt multi-family housing revenue bonds issued for the (collectively, the “**Transaction Documents**”) shall, after the expiration of any cure period under the respective agreement or document, be a default under this Note (a “**Default**”), and a default under this Note, after notice and expiration of a ten (10) day cure period for monetary defaults or a thirty (30) day cure period for non-monetary defaults, shall be an Event of Default under the Agreement and the HACSM Deed of Trust.

2. Interest. The Note Amount shall bear simple interest at three percent (3%) per annum; provided, however, that prior to the date Borrower’s Construction Loan closes, the Executive Director of HACSM shall have the right, in his or her sole and absolute discretion, to reduce the interest rate to as low as zero percent (0%) upon receipt of adequate documentation supporting the need for such reduction in order to make the Project financially feasible.

3. Repayment of Note Amount. The Note Amount shall be paid by the Borrower’s annual payment to HACSM of the following amount:

A. If Borrower obtains a Tranche C Loan, and does not also obtain a loan of funds from a public agency (other than the County of San Mateo) that requires payment from Residual Receipts, then for the first fifteen (15) years following the date Borrower completes construction of the Project, Borrower shall pay to HACSM ten percent (10%) of the Residual Receipts from operation of the Project, as determined by a Residual Receipts calculation from the operation of the Project the preceding calendar year; provided, however, that said ten percent (10%) shall be divided proportionately with the lender(s) of any other loan(s) obtained by Borrower that is payable from Residual Receipts, including, without limitation, any loan obtained from the County of San Mateo. In such event, the remaining ninety percent (90%) of the Residual Receipts shall be utilized for purposes of making payments on the Tranche C Loan.

Commencing on the later of, (i) the sixteenth (16th) year following the date Borrower completes construction of the Project, or (ii) the year when the Tranche C Loan has been fully repaid, Developer shall pay to HACSM seventy-five percent (75%) of the Residual Receipts, as determined by a Residual Receipts calculation from the operation of the Project the preceding calendar year; provided, however, that said seventy-five percent (75%) shall be divided proportionately with the lender of any other loan obtained

by Borrower that is payable from Residual Receipts, including, without limitation, any loan obtained from the County of San Mateo. In the event the Tranche C Loan has not been fully repaid by the sixteenth (16th) year following the date Borrower completes construction of the Project, Borrower shall continue to pay to HACSM (and the lender of any other loan obtained by Borrower that is payable from Residual Receipts, including, without limitation, the County of San Mateo) ten percent (10%) of the Residual Receipts, until such time as Borrower has fully repaid the Tranche C Loan.

B. If Borrower (i) does not secure a Tranche C Loan, or (ii) secures a Tranche C Loan but also obtains a loan of funds from a public agency (other than the County of San Mateo) that requires payment from Residual Receipts, then Borrower shall be required to pay to HACSM, for the full term of this Note, fifty percent (50%) of the Residual Receipts; provided, however, that said fifty percent (50%) shall be divided proportionately with the lender(s) of any other loan(s) obtained by Borrower that is payable from Residual Receipts, including, without limitation, the County of San Mateo.

Annual Residual Receipts payments shall be made by the Borrower by cashier's check and shall be delivered on or before June 1st for each year during the term of this Note commencing in the first fiscal year following the date construction of the Project has been completed, as evidenced by Borrower's obtainment of a certificate of occupancy for the Project, and continuing until the Note Amount and all unpaid interest thereon has been repaid in full. Additionally, the Note Amount shall be paid by any or all of the following: (i) one hundred percent (100%) of the Refinancing Net Proceeds immediately upon any refinancing of the loans secured by the Property (or any part thereof), (ii) one hundred percent (100%) of the Transfer Net Proceeds immediately upon any transfer in whole or in part of the Project, and (iii) any Cost Savings, pursuant to Section 6.8 of the Agreement.

As used herein, "*Affiliate*" means any "Person," directly or indirectly, "Controlling" or "Controlled" by or under common "Control" with such Person, whether by direct or indirect ownership of equity interests, by contract or otherwise, where "**Person**" means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind, "**Control**" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract or otherwise, and "**Controlling**" and "**Controlled**" means exercising or having Control.

As used herein, “*Annual Financial Statement*” means each certified financial statement of Borrower for the Project using generally accepted accounting principles (“GAAP”), as separately accounted for this Project, including Operating Expenses and Annual Project Revenue, prepared annually at Borrower’s expense, by an independent certified public accountant reasonably acceptable to HACSM.

As used herein, “*Annual Project Revenue*” means all gross income and all revenues of any kind from the Project in a calendar year, of whatever form or nature, whether direct or indirect, with the exception of the items excluded below, actually received by or paid to or for the account or benefit of Borrower or any of their agents or employees, from any and all sources, resulting from or attributable to the ownership, operation, leasing and occupancy of the Project, determined on the basis of generally accepted accounting principles applied on a consistent basis, and shall include, but not be limited to: (i) gross rentals paid by tenants of the Project under leases, and payments and subsidies of whatever nature, including without limitation any payments, vouchers or subsidies from the U.S. Department of Housing and Urban Development or any other person or organization, received on behalf of tenants under their leases, (ii) amounts paid by residents of the Project to Borrower or any Affiliate of Borrower on account of Operating Expenses for further disbursement by Borrower or such Affiliate to a third party or parties, (iii) late charges and interest paid on rentals, (iv) rents and receipts from licenses, concessions, vending machines, coin laundry and similar sources, (v) other fees, charges or payments not denominated as rental but payable to Borrower in connection with the rental of office, retail, storage, or other space in the Project, (vi) consideration received in whole or in part for the cancellation, modification, extension or renewal of leases, and (vii) interest and other investment earnings on security deposits, reserve accounts and other Project accounts to the extent disbursed for other than the purpose of the reserve. Notwithstanding the foregoing, gross income shall not include the following items: (a) security deposits from tenants (except when applied by Borrower to rent or other amounts owing by tenants); (b) capital contributions to Borrower by its members, partners or shareholders (including capital contributions required to pay any Deferred Developer Fee); (c) condemnation or insurance proceeds; (d) funds received from any source actually and directly used for initial development of the Project; (e) receipt by an Affiliate of management fees or other bona fide arms-length payments for reasonable and necessary Operating Expenses associated with the Project; (f) Transfer Net Proceeds; or (g) Refinancing Net Proceeds.

As used herein “*Capital Replacement Reserve*” shall have the meaning ascribed thereto in the HACSM Regulatory Agreement.

As used herein, “*CPI Adjustment*” means the increase in the cost of living index, as measured by the Consumer Price Index for all urban consumers, San Francisco-Oakland-Hayward statistical area, all items (1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (“CPI”) in effect as of the date on which the Certificate of Occupancy is issued for the Project to the CPI in effect as of the date on which an adjustment is made. If such index is discontinued or revised, such other index with which such index is replaced (or if not replaced, another index which reasonably reflects and monitors consumer prices) shall be used in order to obtain substantially the same results as would have been obtained if the discontinued index had not been discontinued or revised. If the CPI is changed so that the base year is other than 1982-84, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

As used herein, “*Debt Service*” means payments made in a calendar year pursuant to the approved “Construction Loan” or the “Take-Out Loan,” as applicable, obtained for the construction/development, and ownership of the Project, as set forth in the Final Project Budget, or any permitted refinancing or modification thereof, but excluding payments made pursuant to this Note and payments made on any other “soft” debt.

As used herein, “*Deferred Developer Fee*” means the portion of the Borrower’s development fee, if any, that is payable out of the Annual Project Revenue and not from capital sources, as set forth in the Final Project Budget. Disbursement of the Deferred Developer Fee (all or any part thereof) shall be subject to the provisions of the next paragraph.

In connection with Borrower’s eligibility to disburse all or any part of the Deferred Developer Fee, in the event the cost of completing the Project exceeds the amount set forth in the Final Project Budget; then, to the extent necessary, the funds otherwise available to pay the developer fee from capital sources shall be expended and used to pay the remaining costs of completing the Project to the extent necessary to ensure the completion of the Project and the balance of the developer fee shall be paid as Deferred Developer Fee in accordance with the priority set forth in the Partnership Agreement, and/or payable from the proceeds of any approved refinancing or transfer of the Property

and/or the Project. In no event shall Borrower be eligible for disbursement of the Deferred Developer Fee or any part thereof prior to completion of the Project, as approved by the Executive Director as evidenced by the issuance by HACSM of the “Release of Construction Covenants” pursuant to the Agreement.

As used herein, “*Final Project Budget*” means the “Final Project Budget” approved by HACSM pursuant to the process described in Section 6.4 of the Agreement. Notwithstanding the termination of the Agreement, the Final Project Budget shall survive such termination.

As used herein, “*Ground Lease*” means that certain Ground Lease executed by Borrower, as “Tenant,” and HACSM, as “Landlord,” to set forth the terms and conditions for HACSM’s lease of the Property to Developer.

As used herein, “*HACSM Deed of Trust*” means that certain Leasehold Deed of Trust with Assignment of Rents executed by Borrower, as “Trustor,” in favor of HACSM, as “Beneficiary,” and recorded on or about the date hereof, in the Official Records of the County of San Mateo, securing Borrower’s repayment under this Note.

As used herein, “*HACSM Regulatory Agreement*” means that certain Affordable Housing Regulatory Agreement executed by Borrower, as “Developer,” and HACSM, and recorded on or about the date hereof, in the Official Records of the County of San Mateo, which establishes certain restrictive covenants against the Property.

As used herein, “*Operating Expenses*” means actual, reasonable and customary (for comparable high quality rental developments in San Mateo County) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Project in a calendar year, which are in accordance with the annual Operating Budget approved by HACSM pursuant to Section 9 of HACSM Regulatory Agreement, including, without limitation, painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of property management, fees and expenses of accountants, attorneys and other professionals, and other actual, reasonable and customary operating costs which are directly incurred and paid by Borrower, but which are not paid from or eligible to be paid

from the Operating Reserve or any other reserve accounts. In addition, Operating Expenses shall include a social services fee in the amount of _____ Dollars (\$_____) for calendar year 20__, which shall be increased annually by three and five-tenths percent (3.5%) per year, provided Borrower provides the social services described in (a) Borrower's tax credit application or any other application for funding obtained by Borrower for development and/or operation of the Project, (b) the "Resident Services Plan" (as that term is defined in the HACSM Regulatory Agreement, and (c) the Scope of Development attached to the Agreement (which Scope of Development shall survive any termination of the Agreement). Operating Expenses shall not include any of the following: (i) salaries of employees of Borrower or Borrower's general overhead expenses, or expenses, costs and fees paid to an Affiliate of Borrower, to the extent any of the foregoing exceed the expenses, costs or fees that would be payable in a bona fide arms' length transaction between unrelated parties in the San Mateo County area for the same work or services; (ii) any amounts paid directly by a tenant of the Project to a third party in connection with expenses which, if incurred by Borrower, would be Operating Expenses; (iii) optional or elective payments with respect to the Construction Loan; (iv) any payments with respect to any Project-related loan or financing that has not been approved by HACSM; (v) expenses, expenditures, and charges of any nature whatsoever arising or incurred by Borrower prior to completion of the Project with respect to the development of the Project, or any portion thereof, including, without limitation, all predevelopment and preconstruction activities conducted by Borrower in connection with the Project, including without limitation, the preparation of all plans and the performance of any tests, studies, investigations or other work, and the construction of the Project and any on site or off site work in connection therewith; or (vi) depreciation, amortization, and accrued principal and interest expense on deferred payment debt.

As used herein, "*Operating Reserve*" shall have the meaning ascribed thereto in the HACSM Regulatory Agreement.

As used herein, "*Partnership Agreement*" means the agreement which sets forth the terms of the Borrower's limited partnership, as such agreement may be amended from time to time.

As used herein, "*Refinancing Net Proceeds*" means the proceeds of any approved refinancing of the Construction Loan, Take-Out Loan, or other approved financing

secured by the Property, net of the following actual costs and fees incurred: (i) the amount of the financing which is satisfied out of such proceeds, (ii) reasonable and customary costs and expenses incurred in connection with the refinancing, (iii) the balance, if any, of the Deferred Developer Fee, (iv) the balance, if any, of authorized loans to the Project made by the limited partners of Borrower, including interest at the rate set forth in the Partnership Agreement for such loans, (v) the balance, if any, of authorized operating loans or development loans made by the general partners of a limited partnership that succeeds to Borrower's interest in the Agreement and the Project, including interest at the rate set forth in the Partnership Agreement for such loans, (vi) the return of capital contributions, if any, to the Project made by the general partners of a limited partnership that succeeds to Borrower's interest in the Agreement and the Project, and (vii) the amount of proceeds required to be reserved for the repair, rehabilitation, reconstruction or refurbishment of the Project.

As used herein, "*Rent*" means rent payable to HACSM under the Ground Lease.

As used herein, "*Reserve Deposits*" means any payments to the Capital Replacement Reserve account and payments to the Operating Reserve account pursuant to Sections 10 and 11, respectively, of HACSM Regulatory Agreement or such higher amounts as may be otherwise required by (i) any lender of a Project-related loan that has been approved by HACSM, or (ii) the tax credit investor, pursuant to the terms of the Partnership Agreement.

As used herein, "*Residual Receipts*" means Annual Project Revenue less the sum of:

- (i) Operating Expenses;
- (ii) Debt Service;
- (iii) Reserve Deposits to the Capital Replacement Reserve;
- (iv) Reserve Deposits to the Operating Reserve;
- (v) Deferred Developer Fees;
- (vi) Unpaid Tax Credit adjustment amounts, if any, pursuant to the Partnership Agreement;

(vii) Current (but not accrued) asset management fee in an annual amount of _____(\$_____), increasing annually by three percent (3%);

(viii) Current (but not accrued) partnership management fee in an annual amount of _____ (\$_____), increasing annually by three percent (3%);

(ix) Repayment of loans to the Project, if any, made by the limited partner(s) of Borrower pursuant to the Partnership Agreement, including interest at the rate set forth in the Partnership Agreement, for eligible development and/or operating expense deficits or other eligible loans (provided that if made during the compliance period Borrower shall provide to Executive Director documentation showing the propriety of such loan(s) and if made subsequent to the expiration of the compliance period each such loan must be reasonably approved by the Executive Director before being provided to the Project after review of documentation provided by Borrower showing propriety of such loans);

(x) Repayment to the administrative and/or managing general partners of Borrower for loans to the Project for development advance(s) pursuant to the Partnership Agreement, operating deficit advance(s) pursuant to the Partnership Agreement, credit adjuster payment(s) pursuant to the Partnership Agreement), and/or development fee advance(s) pursuant to the Partnership Agreement, and with all such loans to be repaid without interest (provided that if made during the compliance period, then if Borrower wants to deduct the repayments of such loans from Annual Project Revenue for purposes of calculating Residual Receipts, Borrower shall provide to Executive Director documentation showing the propriety of such loan(s) and if made subsequent to the expiration of the compliance period each such loan must be reasonably approved by the Executive Director before being provided to the Project after review of documentation provided by Borrower showing propriety of such loans); and

(xi) Repayment to the administrative and/or managing general partners of Borrower of certain loans made to the Project after the expiration or earlier termination of the Partnership Agreement to cover shortfalls in funding for Operating Expenses in excess of the Operating Expenses included in the approved annual Operating Budget for the year in which such loan is made (if at all), all such loans to be repaid without interest (provided that if made during the compliance period, then if Borrower wants to deduct the repayments of such loans from Annual Project Revenue for purposes of calculating Residual Receipts, Borrower shall provide to Executive Director documentation showing the propriety of such loan(s) and if made subsequent to the expiration of the compliance

period each such loan must be reasonably approved by the Executive Director before being provided to the Project after review of documentation provided by Borrower showing propriety of such loans).

In the event any calculation of Annual Project Revenue less subsections (i) through (xi) inclusive above results in a negative number, then Residual Receipts shall be zero (\$0) for that year and shall not carry over to the next or any other subsequent year.

In addition, none of the fees, costs, expenses, or items described above in calculation of Residual Receipts shall include any duplicate entry/item, or double accounting for a cost item. The calculation of Residual Receipts shall be conducted at Borrower's sole cost and expense, by a third party auditor and submitted to Borrower annually, along with Borrower's payment of Residual Receipts.

As used herein, "*Tranche C Loan*" means a Residual Receipts loan provided to Borrower by MidPen or by another lender approved by HACSM. In the event Borrower obtains the Tranche C Loan, such loan shall be identified in the Final Project Budget.

As used herein, "*Transfer Net Proceeds*" means the proceeds of any sale or other transfer, in whole or part, of the Property or Borrower's interests therein, net only of (i) the reasonable and customary costs and expenses incurred in connection with such transfer; (ii) the amount of the financing which is satisfied out of such proceeds, (iii) the balance, if any, of the Deferred Developer Fee, (iv) the balance, if any, of loans to the Project made by the limited partners of Borrower, including interest thereon as provided in the Partnership Agreement, (v) the balance, if any, of operating loans or development loans made by the general partners of Borrower, including interest thereon as provided in the Partnership Agreement, and (vi) the return of capital contributions, if any, to the Project made by the general partners of Borrower.

4. Security. Borrower's obligations under this Note and the Agreement shall, at all times during which any amount remains outstanding hereunder, be secured by the HACSM Deed of Trust, which HACSM Deed of Trust shall only be subordinated to the approved deed(s) of trust for the Construction Loan and Take-Out Loan and, if applicable, any loan from the California Department of Housing and Community Development where such subordination is required pursuant to applicable regulations, and such encumbrances approved by HACSM in writing, pursuant to a written subordination agreement in a form approved by HACSM counsel. Upon execution of the same, the

terms of the HACSM Deed of Trust are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein.

5. Maturity. This Note shall be due and payable on the fifty-fifth (55th) anniversary of the date a certificate of occupancy has been issued for the Project.

6. Application of Payments. All payments shall be applied (i) first, to costs and fees owing under this Note, (ii) second, to the payment of unpaid accrued interest owing under this Note for each calendar year in which no payment was made by Borrower pursuant to Section 3 above, (iii) third, to the payment of accrued interest for the preceding calendar year, and (iv) fourth, to payment of principal.

7. Waivers.

(a) Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at HACSM's sole discretion and that HACSM may accept security in consideration for any such extension or release any security for this Note at its sole discretion all without in any way affecting the liability of Borrower.

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

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

(d) Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights or interests in or to properties securing this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

(e) No previous waiver and no failure or delay by HACSM in acting with respect to the terms of this Note or the HACSM Deed of Trust shall constitute a waiver of any breach, default, or failure or condition under this Note, the HACSM Deed of Trust or the obligations secured thereby. A waiver of any term of this Note, the HACSM Deed of

Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

8. Attorneys' Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, Borrower will pay all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

9. Joint and Several Obligation. This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

10. Amendments and Modifications. This Note may not be changed orally, but only by an amendment approved by HACSM and evidenced in a writing signed by Borrower and by HACSM.

11. HACSM May Assign. HACSM may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Borrower.

12. Borrower Assignment Prohibited. In no event shall Borrower assign or transfer any portion of this Note without the prior express written consent of HACSM, which consent shall not unreasonably be withheld, except pursuant to a transfer that is authorized under Section 15 of the Agreement.

13. Acceleration and Other Remedies. Upon the occurrence of a Default, HACSM may, at HACSM's option, declare the outstanding principal amount of this Note, together with the then accrued and unpaid interest thereon and other charges hereunder, and all other sums secured by the HACSM Deed of Trust, to be due and payable immediately, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice, all as further set forth in the HACSM Deed of Trust. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this Note, may be added to the principal hereunder, and shall accrue interest as provided herein. HACSM shall at all times have the right to proceed against any portion of the security for this Note in such order and in such manner as HACSM may consider appropriate, without waiving any rights with respect to any of the security. Any delay or omission on the part of HACSM in exercising any right hereunder, under the Agreement or under the HACSM Deed of Trust shall not operate as

a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of HACSM's right to either require prompt payment when due of all other sums payable hereunder or to declare a Default for failure to make prompt or complete payment.

14. Alternate Rate. Upon the occurrence of any Default, or upon the maturity hereof (by acceleration or otherwise), the entire unpaid principal sum, at the option of HACSM, shall bear interest, from the date of occurrence of such Default or maturity and after judgment and until collection, at the "**Alternate Rate**", such rate being the highest interest rate then permitted by law. Interest calculated at the Alternate Rate, when and if applicable, shall be due and payable immediately without notice or demand. Borrower agrees that in the event of any Default, HACSM will incur additional expense in servicing the loan evidenced by this Note and will suffer damage and loss resulting from such Default. Borrower agrees that in such event HACSM shall be entitled to damages for the detriment caused thereby, which damages are extremely difficult and impractical to ascertain. Therefore, Borrower agrees that the Alternate Rate (as applied to the unpaid principal balance, accrued interest, fees, costs and expenses incurred) is a reasonable estimate of such damages to HACSM, and Borrower agrees to pay such sum on demand.

15. Consents. Borrower hereby consents to: (a) any extension (whether one or more) of the time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Borrower, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such extension, release, surrender, exchange or substitution may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

16. Interest Rate Limitation. HACSM and Borrower stipulate and agree that none of the terms and provisions contained herein or in any of the loan instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if any holder of this Note shall collect monies which are deemed to constitute interest which would otherwise

increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of such holder, be credited to the payment of the sums due hereunder or returned to Borrower.

17. Successors and Assigns. Whenever "HACSM" is referred to in this Note, such reference shall be deemed to include HACSM and its successors and assigns, including, without limitation, any successor to its rights, powers, and responsibilities, and any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of HACSM and HACSM's successors and assigns.

18. Miscellaneous. Time is of the essence hereof. This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California. Borrower irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of San Mateo or the United States District Court of the Northern District of California, as HACSM may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

19. Non-Recourse Obligation. Borrower and its partners shall not be personally liable for the payment of this Note or for the payment of any deficiency established after judicial foreclosure or trustee's sale; provided, however, that the foregoing shall not in any way affect any rights HACSM may have (as a secured party or otherwise) hereunder or under the Agreement or the HACSM Deed of Trust to recover directly from Borrower any amounts, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by HACSM as a result of fraud, intentional misrepresentation or bad faith waste, and any costs and expenses incurred by HACSM in connection therewith (including without limitation reasonable attorneys' fees and costs).

20. Accounting.

(a) **Accounting Terms and Determinations.** Unless otherwise specified herein, (i) all accounting terms used herein shall be interpreted, (ii) all

accounting determinations hereunder shall be made, and (c) all books, records and financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP, consistently applied, except for changes approved by HACSM.

(b) **Financial Reporting and Accounting Covenants.** Borrower shall permit the representatives of HACSM at any time or from time to time, upon three (3) business days' notice and during normal business hours, to inspect, audit, and copy all of Borrower's books, records, and accounts relating to the Property. Borrower shall furnish or cause to be furnished to HACSM the following:

(i) **Annual Financial Statement.** Borrower shall submit to HACSM, on or before May 1 of each year commencing in the first year after the issuance of the first certificate of occupancy for the Project, an Annual Financial Statement, with respect to the Project that has been reviewed by an independent certified public accountant, together with an expressed written opinion of the certified public accountant that such Annual Financial Statement presents the financial position, results of operations, and cash flows of the Project fairly and in accordance with GAAP.

(ii) **Tax Returns.** As soon as available, but in no event later than thirty (30) days after the time of filing with the Internal Revenue Service, the federal tax returns (and supporting schedules, if any) of Borrower.

(iii) **Audit Reports.** Not later than ten (10) days after receipt thereof by Borrower, copies of all reports submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower, made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit. If any such audit report results in Borrower restating Residual Receipts upward for any fiscal year, then Borrower shall accompany delivery of such audit report to HACSM with the additional payment to HACSM resulting from said restatement pursuant to Section 3 of this Note. If any such audit report results in Borrower restating Residual Receipts downward for any fiscal year, Borrower may carry forward the overpayment made to HACSM pursuant to such Section 3 as a credit against payments thereunder in subsequent fiscal years.

(c) **Late Payment.** If any annual payment required pursuant to Section 3 above is not received by HACSM within ten (10) calendar days after payment

is due, Borrower shall pay to HACSM a late charge of five percent (5%) of such payment, such late charge to be immediately due and payable without demand by HACSM.

(d) **Dispute Regarding Annual Financial Statement.** If HACSM disputes any Annual Financial Statement, HACSM shall notify Borrower of such dispute within sixty (60) days after receipt of an Annual Financial Statement and the parties shall cause their representatives to meet and confer concerning the dispute and to use all reasonable efforts to reach a mutually acceptable resolution of the matter in question within thirty (30) days after HACSM's notice of such dispute. If the parties are unable to reach a mutually acceptable resolution within such thirty (30) day period, then, within twenty (20) days after the expiration of such period, Borrower and HACSM shall appoint a national firm of certified public accountants to review the dispute and to make a determination as to the matter in question within thirty (30) days after such appointment. If the parties cannot, within ten (10) days, agree upon the firm to be appointed, then, upon the application of either party, such firm shall be appointed by the Presiding Judge of the Superior Court for the County of San Mateo, California. Such firm's determination shall be final and binding upon the parties. Such firm shall have full access to the books, records and accounts of Borrower and the Property.

(e) **Underpayment.** If any audit by HACSM reports an underpayment by Borrower on this Note, Borrower shall pay the amount of such underpayment, together with the late charge set forth in Section 20(c) of this Note, to HACSM within ten (10) days after written notice thereof to Borrower or, in the event of a dispute, after timely notice to Borrower of the resolution of such dispute by the independent firm of certified public accountants, as the case may be, and if such underpayment amounts to more than five percent (5%) of the disputed payment for the period audited, then, notwithstanding anything to the contrary in this section, Borrower shall pay to HACSM, within ten (10) days after written demand, HACSM's reasonable costs and expenses in conducting such audit and exercising its rights under this Section 20 of this Note.

BORROWER:

MP Midway Associates I, L.P., a California limited partnership

By: MP Midway I, LLC,
a California limited liability company,
Its: General Partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit corporation,
Its: Sole member/manager

Date: _____, 20__

By: _____
Jan M. Lindenthal
Assistant Secretary

ATTACHMENT NO. 10
HACSM DEED OF TRUST

[See following document]

RECORDING REQUESTED BY:
AND WHEN RECORDED RETURN TO:

County of San Mateo Department
of Housing
264 Harbor Blvd., Building A
Belmont, CA 94002-4017
Attn: Barbara Deffenderfer

APN: _____

[Free Recording Requested
Government Code Sections 6103 and 27383]

**LEASEHOLD DEED OF TRUST
WITH ASSIGNMENT OF RENTS**

NOTE: RIDER ATTACHED TO THIS DEED OF TRUST CONTAINING TERMS INCLUDING SECURITY AGREEMENT AND FIXTURE FILING.

This DEED OF TRUST WITH ASSIGNMENT OF RENTS AND RIDER ATTACHED HERETO ("Deed of Trust"), is made _____, _____, between MP MIDWAY ASSOCIATES I, L.P., a California Limited Partnership, herein called TRUSTOR, whose address is 303 Vintage Park Drive, Suite 250, Foster City, CA 94404, OLD REPUBLIC TITLE COMPANY, a California corporation, herein called TRUSTEE, and HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO, a public body, corporate and politic, herein called BENEFICIARY.

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, Trustor's estate, dated on or about the date hereof, in that property in the City of Daly City, State of California, described in Exhibit "A" (the "Property"),

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of _____ DOLLARS (\$_____), with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein; and (3) payment of

additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the Property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5		Book 1964,	Page	
										149774	

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

SEE RIDERS ATTACHED TO THIS DEED OF TRUST

TRUSTOR:

MP Midway Associates I, L.P., a California limited partnership

By: MP Midway I, LLC,
a California limited liability company,
Its : General partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit corporation,
Its: Sole member/manager

Date: _____, 20__

By: _____
Jan M. Lindenthal
Assistant Secretary

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who 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.

Signature _____

(Seal)

DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

4) To pay: at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from the date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto”.

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default (beyond any applicable cure period, and during the continuance of such default), Beneficiary may at any time without notice, either in person, by agent, or be a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney’s fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place

fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

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

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

TO _____, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes and of all indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, an all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

Please mail Deed of Trust,

Note and Reconveyance to _____

Do Not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

[To be recorded against Trustor's interest under the Ground Lease.]

RIDER TO DEED OF TRUST WITH ASSIGNMENT OF RENTS

This RIDER TO DEED OF TRUST WITH ASSIGNMENT OF RENTS (“**Rider**”) is executed this ___ day of _____ by MP MIDWAY ASSOCIATES I, L.P., a California limited partnership, herein “Trustor,” in favor of the HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO, a public body, corporate and politic, herein “**Beneficiary**,” the same parties to that certain form Deed of Trust With Assignment of Rents, of even date hereto, to which this Rider is attached. This Rider is made a part of and is incorporated into said Deed of Trust. This Rider shall supersede any conflicting term or provision of the form Deed of Trust to which it is attached.

Reference is made to (i) that certain HACSM Promissory Note executed by Trustor on or about the date set forth above, the repayment of which by Trustor is secured by this Deed of Trust (“**HACSM Note**”), (ii) that certain Affordable Housing and Property Disposition Agreement between Trustor and Beneficiary dated for identification purposes only as of _____ (collectively, the “**Agreement**”), and (iii) that certain Affordable Housing Regulatory Agreement, by and between Trustor and Beneficiary, for the benefit of Beneficiary, and recorded in the Office of the San Mateo County Recorder (“**HACSM Regulatory Agreement**”).

The parties hereto agree:

1. Property. The estate subject to this Deed of Trust is Trustor’s leasehold estate in the real property legally described in the foregoing Deed of Trust to which this Rider is attached (the “**Property**”).

2. Obligations Secured. Trustor makes this grant and assignment for the purpose of securing the following obligations (“**Secured Obligations**”):

- a. Payment to Beneficiary of all indebtedness at any time owing under the terms of the HACSM Note;
- b. Payment and performance of all obligations of Trustor under this Deed of Trust;
- c. Payment and performance of all obligations of Trustor under the Agreement (until such time as the Agreement terminates) and the

HACSM Regulatory Agreement.

- d. Payment and performance of all future advances and other obligations of Trustor or any other person, firm, or entity with the approval of Trustor, may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
- e. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced.

3. Obligations. The term “obligations” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and fees at any time accruing or assessed on any of the Secured Obligations.

4. Incorporation. All terms of the HACSM Note, Agreement, and HACSM Regulatory Agreement, and the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of all of the foregoing documents.

5. Mortgagee-in-Possession. Neither the assignment of rents set forth in the Deed of Trust nor the exercise by Beneficiary of any of its rights or remedies hereunder shall be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property.

6. No Cure. In the event Beneficiary collects and receives any rents under the Deed of Trust upon any default hereof, such collection or receipt shall in no way constitute a curing of the default, except if and to the extent the same are sufficient to cure all monetary defaults and no other defaults then exist.

7. Possession Upon Default. Upon the occurrence of and during the continuation of a default, Beneficiary, after having given notice and the applicable cure periods having expired with the default having not been cured (hereinafter, a “**default**”), may, at its option, without any action on its part being required and without in any way waiving such default, take possession of the Property in accordance with applicable law and have, hold, manage, lease and operate the same, on such terms and for such period of time as Beneficiary may deem proper, and may collect and receive all rents and profits, with full power to make, from time to time, all commercially reasonable alterations, renovations, repairs or replacements thereto as may seem proper to Beneficiary, and to apply such rents and profits to the payment of (a) the cost of all such alterations, renovations, repairs and replacements, and all costs and expenses incident to taking and retaining possession of the Property, and the management and operation thereof, and keeping the same properly insured; (b) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment of the HACSM Note, and premiums for insurance, with interest on all such items; and (c) the indebtedness secured hereby, together with all costs and attorney’s fees, in such order or priority as to any of such items as Beneficiary in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Any amounts received by Beneficiary or its agents in the performance of any acts prohibited by the terms of this assignment, including, but not limited to, any amounts received in connection with any cancellation, modification or amendment of any lease prohibited by the terms of this assignment and any rents and profits received by Trustor after the occurrence of a default shall be held by Trustor as trustee for Beneficiary and all such amounts shall be accounted for to Beneficiary and shall not be commingled with other funds of the Trustor. Any person receiving any portion of such trust funds shall receive the same in trust for Beneficiary as if such person had actual or constructive notice that such funds were impressed with a trust in accordance therewith.

8. Receiver. In addition to any and all other remedies of Beneficiary set forth under this Deed of Trust or permitted at law or in equity, if a default shall have occurred and not have been cured within any applicable cure period, Beneficiary, to the extent permitted by law and without regard to the value, adequacy or occupancy of the security for the Note and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property and to collect all rents and profits and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction by ex parte application

and without notice, notice of hearing being hereby expressly waived. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the power herein contained shall be secured by this Deed of Trust.

9. Notice to Beneficiary. Notices to Beneficiary shall be sent to Beneficiary addressed to:

Housing Authority of the County of San Mateo
264 Harbor Blvd., Building A
Belmont, CA 94002-4017
Attn: Executive Director
Reference: Midway/Bayshore Redevelopment Project

10. Limited Partner Cure Rights. Notwithstanding anything to the contrary set forth herein, Beneficiary shall not exercise any right hereunder without providing the limited partner of Trustor with not less than thirty (30) days prior written notice and right to cure any default giving rise to the exercise of said remedy. Beneficiary agrees that any cure tendered by the limited partner of Trustor shall be accepted or rejected on the same terms and conditions as if tendered directly by Trustor.

11. Subordination Acknowledgement. Beneficiary hereby acknowledges that the loan secured by this Deed of Trust is also subordinate to the extended use agreement required to be executed by Borrower pursuant to Section 42(h)(6)(B) of the Internal Revenue Code, for purposes of the low-income housing tax credits to be allocated to Trustor. In addition, Beneficiary hereby acknowledges that the loan secured by this Deed of Trust is further subordinate to Section 42(h)(6)(e)(ii) of the Internal Revenue Code, which prohibits the eviction or termination of a tenancy, other than for good cause, of an existing tenant of any low-income housing tax credit unit or any increase in the gross rent with respect to such unit, not otherwise permitted under Section 42, for a period of three (3) years after the date the Property is acquired by Beneficiary through foreclosure or instrument in lieu of foreclosure.

[signatures on next page]

IN WITNESS WHEREOF, Trustor has executed this Rider on the date of Trustor's acknowledgment herein below, to be effective for all purposes as of the day and year first set forth above.

TRUSTOR:

MP Midway Associates I, L.P., a California limited partnership

By: MP Midway I, LLC,
a California limited liability company,
Its: General partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit corporation,
Its: Sole member/manager

By: _____
Jan M. Lindenthal
Assistant Secretary

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who 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.

Signature _____ (Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who 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.

Signature _____

(Seal)

ATTACHMENT NO. 11

PRELIMINARY PROJECT BUDGET

Midway Phase 1



SOURCES AND USES		
CONSTRUCTION SOURCES		per unit
Construction Loan	\$ 89,615,091	609,626
HACSM Land Lease Value	\$ 25,200,000	171,429
Tax Credit Investor Proceeds	\$ 4,613,786	31,386
AHF	\$ 918,842	6,251
County funds	\$ 7,207,609	49,031
GP Equity	\$ 12,366,657	84,127
Residual Receipts Subsidy Loan	\$ 5,000,000	34,014
Phase 2 Garage reimbursement	\$ 9,237,615	62,841
total	\$ 154,159,600	\$1,048,705

PERMANENT SOURCES			
		per unit	percent
Amortizing Perm Loan, Tranche A	\$ 32,383,400	220,295	20.6%
Amortizing Perm Loan, Tranche B	\$ 18,713,100	127,300	11.9%
Tax Credit Investor Proceeds	\$ 46,137,858	313,863	29.4%
County AHF	\$ 918,842	6,251	0.6%
Phase 2 Garage reimbursement	\$ 9,237,615	62,841	5.9%
Residual Receipts Subsidy Loan	\$ 5,000,000	34,014	3.2%
GP Equity	\$ 12,366,657	84,127	7.9%
Housing Authority Fund	\$ 7,207,609	49,031	4.6%
HACSM Land Lease Value	\$ 25,200,000	171,429	16.0%
total	\$ 157,165,081	\$1,069,150	100%

PERMANENT USES			
ACQUISITION	total	per unit	per SF
Land	\$ 25,200,000	\$ 171,429	\$ 167
Other Acquisition Costs	\$ 30,000	\$ 204	\$ 0
Total Acquisition Costs	\$ 25,230,000	\$ 171,633	\$ 167
HARD COSTS			
Resid. Site Work and Structures	\$ 80,896,881	\$ 550,319	\$ 535
Commercial	\$ -	\$ -	\$ -
Escalation Contingency	\$ 4,044,844	\$ 27,516	\$ 27
Overhead & Profit/GC/Ins. Bond	\$ 9,255,109	\$ 62,960	\$ 61
Owner Contingency	\$ 4,709,842	\$ 32,040	\$ 31
Total Hard Costs	\$ 98,906,676	\$ 672,835	\$ 654
SOFT COSTS			
Architecture and Engineering	\$ 3,885,000	\$ 26,429	\$ 26
Construction Loan Interest and fees	\$ 7,945,425	\$ 54,051	\$ 53
Permanent Financing	\$ 575,965	\$ 3,918	\$ 4
Legal Fees	\$ 110,500	\$ 752	\$ 1
Reserves	\$ 925,139	\$ 6,293	\$ 6
Permits and Fees	\$ 2,465,671	\$ 16,773	\$ 16
Other Soft Costs	\$ 1,784,048	\$ 12,136	\$ 12
Developer Fee	\$ 15,336,657	\$ 104,331	\$ 101
Total Soft Costs	\$ 33,028,405	\$ 224,683	\$ 218
TOTAL DEVELOPMENT COSTS	\$ 157,165,081	\$1,069,150	\$ 1,039
SURPLUS / (GAP)	\$ -	\$ -	\$ -

ATTACHMENT NO. 12

GROUND LEASE

[See following document]

GROUND LEASE

By and Between

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO

“Landlord”

and

MP MIDWAY ASSOCIATES I, L.P.

“Tenant”

Dated as of _____

GROUND LEASE

This **GROUND LEASE** (“**Ground Lease**”) dated as of _____ (“**Effective Date**”), is entered into by and between **HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO**, a public body, corporate and politic (“**Landlord**”), and **MP MIDWAY I, L.P.**, a California limited partnership (“**Tenant**”).

RECITALS

A. Landlord is a California entity, organized and existing under California Health and Safety Code section 34200, et seq., authorized to engage, or assist, in the ownership, development, and operation of affordable housing, with its offices in the County of San Mateo

B. Landlord owns fee title to that certain real property located in the City of Daly City, County of San Mateo, State of California more particularly described in Exhibit “A”, which is attached hereto and incorporated herein by this reference (the “**Property**”).

C. Tenant is controlled by an experienced owner, developer and manager of affordable housing for low and moderate-income families.

D. Landlord entered into an Affordable Housing and Property Disposition Agreement with Tenant, dated as of _____ (“**Agreement**”).

E. The Agreement provides for Landlord to ground lease the Property to Tenant, and for Tenant to construct and operate a one hundred forty-seven (147) unit multifamily apartment project with all but two of such units restricted for occupancy by low, very low, and extremely low income households (the “**Project**”).

F. All conditions precedent to the parties entering into this Ground Lease have been satisfied or waived by the applicable party.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated herein by this reference, and the mutual promises, covenants, and conditions herein contained, Landlord and Tenant agree as follows:

ARTICLE 1. LEASE OF THE PROPERTY

1.1 Ground Lease of the Property; Acquisition of Improvements. Landlord leases the Property to Tenant, and Tenant leases the Property from Landlord, on the terms and conditions as set forth in this Ground Lease. Pursuant to the Agreement and subject to the provisions of Section 5.3 hereof, concurrent with the Effective Date of this Ground Lease Tenant will acquire title to all Improvements on the Property and shall hold title to such Improvements during the Term hereof.

1.2 Purpose of Ground Lease. The purpose of this Ground Lease is to provide for the construction, maintenance, management and operation of the Project as a one hundred forty-seven (147) unit multifamily apartment project. Tenant will not occupy or use the Property, nor permit the Property to be occupied or used, nor do or permit anything to be done in or on the Property, in whole or in part, for any other purpose.

1.3 Recorded Encumbrances. This Ground Lease, the interests of Landlord and Tenant hereunder, and the Property, are in all respects subject to and bound by all of the covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record prior to the recordation of this Ground Lease.

1.4 Memorandum of Ground Lease. A short form Memorandum of Unrecorded Ground Lease referring to this Ground Lease, substantially in the form attached hereto and incorporated herein as "Exhibit B", shall be executed by Landlord and Tenant concurrently herewith, and recorded in the Official Records of the County of San Mateo, California ("**Official Records**").

ARTICLE 2. DEFINITIONS.

Capitalized terms used herein are defined where first used in this Ground Lease and/or as set forth in this Article 2. All capitalized terms not defined herein shall have the same meanings ascribed to them in the Agreement. For the purpose of supplying such definitions, the Agreement, notwithstanding anything contained therein or herein to the contrary, shall not merge with this Ground Lease.

"Affiliate" means shall mean any "Person," directly or indirectly, "Controlling" or "Controlled" by or under common "Control" with such Person, whether by direct or indirect ownership of equity interests, by contract or otherwise, where "**Person**" means any association, corporation, governmental entity or agency, individual, joint venture, joint-

stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind, **“Control”** means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract or otherwise, and **“Controlling”** and **“Controlled”** means exercising or having Control.

“Agreement” means the Affordable Housing and Property Disposition Agreement between Landlord and Tenant, dated as of _____.

“Annual Project Revenue” has the meaning ascribed thereto in the Regulatory Agreement.

“Approved Financing” means the financing approved by Landlord pursuant to the Agreement, and as set forth in the Project Budget, obtained by Tenant for the construction/development and ownership of the Project. In addition, Approved Financing shall include any refinancing of the Approved Financing which has been approved by Landlord.

“Award” means any compensation or payment made or paid for the Total, Partial or Temporary Taking of all of any part of or interest in the Property and/or the Improvements, whether pursuant to judgment, agreement or otherwise.

“Base Rent” means the sum of One Dollar (\$1.00).

“Bond Regulatory Agreement” means the regulatory agreement with the Institutional Lender responsible for placing the Tax-Exempt Bonds (applicable only if the Project is financed by issuance of Tax-Exempt Bonds).

“Capital Improvements” means all work and improvements with respect to the Property for which costs and expenses may be capitalized in accordance with Generally Accepted Accounting Principles (“GAAP”).

“Capital Replacement Reserve” has the meaning set forth in the Regulatory Agreement.

“Certificate of Occupancy” means the final certificate of occupancy issued by the City for the Project.

“City” means the City of Daly City, a California municipal corporation.

“Commencement Date” means the date upon which the Memorandum of Ground Lease is recorded in the Official Records.

“Construction Loan” means the construction loan for the Project secured by the Construction Loan Security Documents, in the amount of _____ Dollars (\$_____). If the Project is financed through issuance of the Tax-Exempt Bonds, then Construction Loan shall be understood to mean the proceeds of such Tax-Exempt Bonds. The Construction Loan shall be made by _____ or by another Mortgagee authorized pursuant to Section 17.1 hereof.

“County” means the County of San Mateo.

“CPI Adjustment” means the percentage increase in the cost of living index, as measured by the Consumer Price Index for all urban consumers, San Francisco-Oakland-Hayward statistical area, all items (1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (“CPI”) between the CPI figure in effect as of the date on which the Certificate of Occupancy is issued and the CPI figure in effect as of the date on which an adjustment is made. If such index is discontinued or revised, such other index with which such index is replaced (or if not replaced, another index which reasonably reflects and monitors consumer prices) shall be used in order to obtain substantially the same results as would have been obtained if the discontinued index had not been discontinued or revised. If the CPI is changed so that the base year is other than 1982-84, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

“Debt Service” means mandatory payments made in a calendar year pursuant to the Approved Financing obtained for the construction/development and ownership of the Project or any permitted refinancing or modification thereof, but excluding Rent.

“Deferred Developer Fees” means any deferred developer fee allowable under the Approved Financing.

“DTSC” means the State Department of Toxic Substances Control.

“Event of Default” has the meaning set forth in Article 20.

“Executive Director” means the person duly appointed to the position of Executive Director of Landlord, or his or her designee. The Executive Director shall represent Landlord in all matters pertaining to this Ground Lease. Whenever a reference

is made herein to an action or approval to be undertaken by Landlord, the Executive Director is authorized to act unless this Ground Lease specifically provides otherwise or the context should otherwise require.

“Foreclosure Transferee” means any Mortgagee or other transferee of the leasehold interest under this Ground Lease as a result of a judicial foreclosure, non-judicial foreclosure or assignment of the leasehold in lieu of foreclosure.

“Governmental Requirements” means all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, DTSC, the city, or any other political subdivision in which the Property is located, and any other state, county city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over the Property, including common law.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste”, “acutely hazardous waste”, “extremely hazardous waste”, or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material”, “hazardous substance”, or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., (xii) methyl-tertiary butyl ether, (xiii)

perchlorate or (xiv) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment. For purposes hereof, “Hazardous Materials” excludes materials and substances in quantities as are commonly used in the construction and operation of an apartment complex, provided that such materials and substances are used in accordance with all applicable laws.

“Hazardous Materials Contamination” means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time emanating from the Property.

“HUD” means the U.S. Department of Housing and Urban Development.

“Impositions” means all taxes (including, without limitation, sales and use taxes); assessments (including, without limitation, all assessments for public improvements or benefits whether or not commenced or completed prior to the Commencement Date and whether or not to be completed within the Term); water, sewer or other rents, rates and charges; excises; levies; license fees; permit fees; inspection fees and other authorization fees and other charges; in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including all interests and penalties thereon), which are attributable or applicable to any portion of the Term and may be assessed, levied, confirmed, or imposed on or in respect of, or be a lien upon (a) the Property or the Improvements, or any part thereof, or any estate, right, or interest therein, (b) any occupancy, use, or possession of or activity conducted on the Property or the Improvements, or any part thereof, or (c) this Ground Lease. The term “Impositions” shall also include any and all increases in the foregoing, whether foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any increase in real property taxes resulting from a sale of the Property by Landlord.

“Improvements” means all buildings, structures and other improvements, including the building fixtures thereon, now located on the Property or hereafter constructed on the Property; all landscaping, fencing, walls, paving, curbing, drainage facilities, lighting, parking areas, roadways, and similar site improvements now located or

hereafter placed upon the Property.

“Institutional Lender” means any of the following institutions having assets or deposits in the aggregate of not less than One Hundred Million Dollars (\$100,000,000): a California chartered bank; a bank created and operated under and pursuant to the laws of the United States of America; an “incorporated admitted insurer” (as that term is used in Section 1100.1 of the California Insurance Code); a “foreign (other state) bank” (as that term is defined in Section 1700(1) of the California Financial Code); a federal savings and loan association (Cal. Fin. Code Section 8600); a commercial finance lender (within the meaning of Sections 2600 et seq. of the California Financial Code); a “foreign (other nation) bank” provided it is licensed to maintain an office in California, is licensed or otherwise authorized by another state to maintain an agency or branch office in that state, or maintains a federal agency or federal branch in any state (Section 1716 of the California Financial Code); a bank holding company or a subsidiary of a bank holding company which is not a bank (Section 3707 of the California Financial Code); a trust company, savings and loan association, insurance company, investment banker; college or university; pension or retirement fund or system, either governmental or private, or any pension or retirement fund or system of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any state thereof; and a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended, provided such trust is listed on either the American Stock Exchange or the New York Stock Exchange. Each of Wells Fargo and Bank of America are hereby deemed to be an Institutional Lender.

“Insurance Requirements” means all terms of any insurance policy covering or applicable to the Property or the Improvements, or any part thereof, all requirements imposed by the issuer of any such policy, and all orders, rules, regulations, and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Property or the Improvements, or any part thereof, or any use or condition of the Property or the Improvements, or any part thereof.

“Investor” means the investor limited partner of Tenant.

“HACSM Loan” means that certain loan made by Landlord to Tenant in the original principal amount of _____ Dollars (\$_____).

“HACSM Note” means that certain promissory note made by Tenant in favor of

Landlord on or about _____, evidencing the HACSM Loan.

“Landlord and County and Landlord and County Personnel” means Landlord, the County, and SAMCHAI, a California nonprofit, public benefit corporation, and their respective directors, officers, officials, members, employees, agents, representatives, and volunteers.

“Maintenance Standards” means those standards set forth in Article 10 hereof.

“Memorandum of Ground Lease” refers to the memorandum of unrecorded ground lease which has been recorded as described in Section 1.4.

“Mortgage” has the meaning set forth in Section 17.1 of this Ground Lease.

“Mortgagee” has the meaning set forth in Section 17.1 of this Ground Lease.

“Notice of Intended Taking” means any notice or notification on which a reasonably prudent person would rely and which said person would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, without limitation, the service of a condemnation summons and complaint on a party to this Ground Lease. The notice is considered to have been received when a party to this Ground Lease receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map of the taking which reasonably defines the extent of the taking.

“Official Records” means the Official Records of San Mateo County, California.

“Operating Budget” means an operating budget for the Project, which budget shall be subject to the annual written approval of Landlord in accordance with Section 9 of the Regulatory Agreement.

“Operating Expenses” has the meaning ascribed thereto in the Regulatory Agreement.

“Operating Reserve” has the meaning set forth in the Regulatory Agreement.

“Partial Taking” means any taking of the fee title of the Property and/or the Improvements that is not either a Total, Substantial, or Temporary Taking.

“Partnership Agreement” means the agreement which sets forth the terms of

Tenant's limited partnership, as such agreement may be amended from time to time.

"Plans" means the plans and specifications for the construction of the Project, a set of which, initialed by Tenant, are on file in the offices of Landlord.

"Potential Default" means any condition or event which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default.

"Project" means Tenant's development of an affordable rental housing development consisting of one hundred forty-seven (147) residential dwelling units and all on-site improvements necessary to serve the development, all as more particularly described in the Agreement.

"Property" has the meaning set forth in Recital B above.

"RAP" means that certain Remedial Action Plan for the Property approved by DTSC in August 1993, pursuant to which, from approximately 1993 to 2002, certain remediation activities were carried out within areas of the Property. The RAP s available for public inspection at the office of Landlord, at 264 Harbor Blvd., Building A, Belmont, CA 94002-4017.

"RAP Amendment" means that certain amendment to the RAP approved by DTSC on _____, 2020, which requires additional soil gas testing and, if required, installation of a vapor mitigation system and post-construction monitoring, all as required by DTSC. The RAP Amendment is available for public inspection at the office of Landlord, at 264 Harbor Blvd., Building A, Belmont, CA 94002-4017.

"Refinancing Net Proceeds" means the proceeds of any approved refinancing of the Approved Financing secured by the Property, net of the following actual costs and fees incurred: (i) the amount of the financing which is satisfied out of such proceeds, (ii) reasonable and customary costs and expenses incurred in connection with the refinancing, (iii) the balance, if any, of the Deferred Developer Fee, (iv) the balance, if any, of authorized loans to the Project made by the limited partners of Tenant, including interest at the rate set forth in the Partnership Agreement for such loans, (v) the balance, if any, of authorized operating loans or development loans made by the general partners of Tenant, including interest at the rate set forth in the Partnership Agreement for such loans, (vi) the return of capital contributions, if any, to the Project made by the general partners of Tenant, and (vii) the amount of proceeds required to be reserved for the repair,

rehabilitation, reconstruction, or refurbishment of the Project.

“Regulatory Agreement” means that certain Affordable Housing Regulatory Agreement executed by and between Tenant, as “Developer,” and Landlord, as “HACSM,” on even date herewith, which Regulatory Agreement was recorded in the Official Records.

“Rent” means the rent payable pursuant to Article 4 of this Ground Lease.

“Rental Period” means each of the calendar years throughout the Lease Term. The first Rental Period shall commence upon the issuance of the Certificate of Occupancy and shall terminate upon December 31 of that year. Each Rental Period thereafter prior to the last Rental Period shall commence on January 1 and terminate on December 31. The last Rental period shall commence on January 1 and shall terminate on the last day of the Term.

“Rent Payment Date” means the _____ 1 of each year following the end of each Rental Period; provided, however, that the first Rent Payment Date shall not occur until after the earlier of (i) the date a certificate of occupancy is issued for the Project, and (ii) the second anniversary of the Effective Date.

“Reserve Deposits” means any payments to the Capital Replacement Reserve account and the Operating Reserve account pursuant to Sections 10 and 11, respectively, of the Regulatory Agreement, or such higher amounts as may be otherwise required by (i) any lender of a Project-related loan that has been approved by Landlord, or (ii) the Investor, pursuant to the terms of the Partnership Agreement.

“Residual Receipts” means Annual Project Revenue less the sum of:

- (i) Operating Expenses;
- (ii) Debt Service;
- (iii) Reserve Deposits to the Capital Replacement Reserve;
- (iv) Reserve Deposits to the Operating Reserve;
- (v) Deferred Developer Fees;

(vi) Unpaid Tax Credit adjustment amounts, if any, pursuant to the Partnership Agreement;

(vii) Current (but not accrued) asset management fee in an annual amount of _____(\$____), increasing annually by three percent (3%);

(viii) Current (but not accrued) partnership management fee in an annual amount of _____(\$____), increasing annually by three percent (3%);

(ix) Repayment of loans to the Project, if any, made by the limited partner(s) of Tenant pursuant to the Partnership Agreement, including interest at the rate set forth in the Partnership Agreement for such loans, for eligible development and/or operating expense deficits or other eligible loans (provided that if made during the compliance period Tenant shall provide to Executive Director documentation showing the propriety of such loan(s) and if made subsequent to the expiration of the compliance period each such loan must be reasonably approved by the Executive Director before being provided to the Project after review of documentation provided by Tenant showing propriety of such loans);

(x) Repayment to the administrative and/or managing general partners of Tenant for loans to the Project for development advance(s) pursuant to the Partnership Agreement, operating deficit advance(s) pursuant to the Partnership Agreement), credit adjuster payment(s) pursuant to the Partnership Agreement), and/or development fee advance(s) pursuant to the Partnership Agreement, and with all such loans to be repaid without interest (provided that if made during the compliance period, then if Tenant wants to deduct the repayments of such loans from Annual Project Revenue for purposes of calculating Residual Receipts, Tenant shall provide to Executive Director documentation showing the propriety of such loan(s) and if made subsequent to the expiration of the compliance period each such loan must be reasonably approved by the Executive Director before being provided to the Project after review of documentation provided by Tenant showing propriety of such loans); and

(xi) Repayment to the administrative and/or managing general partners of Tenant of certain loans made to the Project after the expiration or earlier termination of the Partnership Agreement to cover shortfalls in funding for Operating Expenses in excess of the Operating Expenses included in the approved annual Operating Budget for the year in which such loan is made (if at all), all such loans to be repaid without interest (provided that if made during the compliance period, then if Tenant wants to deduct the

repayments of such loans from Annual Project Revenue for purposes of calculating Residual Receipts, Tenant shall provide to Executive Director documentation showing the propriety of such loan(s) and if made subsequent to the expiration of the compliance period each such loan must be reasonably approved by the Executive Director before being provided to the Project after review of documentation provided by Tenant showing propriety of such loans).

In the event any calculation of Annual Project Revenue less subsections (i) through (xi) inclusive above results in a negative number, then Residual Receipts shall be zero (\$0) for that year and shall not carry over to the next or any other subsequent year.

In addition, none of the fees, costs, expenses, or items described above in calculation of Residual Receipts shall include any duplicate entry/item, or double accounting for a cost item. The calculation of Residual Receipts shall be conducted at Tenant's sole cost and expense, by a third party auditor and submitted to Tenant annually, along with Tenant's payment of Residual Receipts.

“Residual Rent” means the sum of _____ Dollars (\$_____).

“Substantial Taking” means the taking of so much of the Property and/or the Improvements that the portion of the Property and/or the Improvements not taken cannot be repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, so as to constitute a complete, rentable structure, capable of producing a proportionately fair and reasonable net annual income after payment of all Operating Expenses, and all other charges payable under this Ground Lease, and after performance of all covenants and conditions required by Tenant by law and under this Ground Lease.

“Take-Out Loan” means the long-term loan made to Developer in order to take out the Construction Loan. If the Project is financed through issuance of Tax-Exempt Bonds, then Take-Out Loan shall be understood to mean the proceeds of such Tax-Exempt Bonds. The Take-Out Loan, if any, shall be from _____, or from another Institutional Investor lender reasonably acceptable to the Executive Director of Landlord.

“Taking” means a taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The taking may occur as a result of a transfer pursuant to the recording of a final

order in condemnation, a voluntary transfer or conveyance to the taking authority under threat of condemnation, or a transfer while condemnation proceedings are pending. Unless otherwise provided, the taking shall be deemed to occur as of the earlier of (a) the date actual physical possession is taken by the condemnor, or (b) the date on which the right to compensation and damages accrues under the law applicable to the Property and/or the Improvements. A taking as used in this Ground Lease does not include the voluntary dedication of any portion of the Property necessary to obtain building permits or to comply with any other applicable governmental rule, regulation or statute; nor does it include the enactment of any law, ordinance or regulation which may affect the use or value of the Property but which does not involve an actual taking of any portion thereof. Eminent domain actions filed by Landlord against former owners of portions of the Property and pending as of the Commencement Date shall not be deemed, construed or interpreted as a Taking under this Ground Lease.

“Tax Credits” means Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*

“Tax Credit Regulatory Agreement” means the regulatory agreement which may be required to be recorded against the Property with respect to the issuance of Tax Credits for the Project.

“Tax Credit Rules” means Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*, and the rules and regulations implementing the foregoing, as the same may be amended from time to time.

“Tax-Exempt Bonds” means tax-exempt multi-family housing revenue bonds.

“Temporary Taking” means a taking of all or any part of the Property and/or the Improvements for a term certain which term is specified at the time of taking. Temporary Taking does not include a taking which is to last for an indefinite period or a taking which will terminate only upon the happening of a specified event unless it can be determined at the time of the taking substantially when such event will occur. If a taking for an indefinite term should take place, it shall be treated as a Total, Substantial or Partial Taking in accordance with the definitions set forth herein.

“Term” has the meaning set forth in Article 3 of this Ground Lease.

“Total Taking” means the taking of the fee title to all of the Property.

“Transaction Documents” means, collectively, the Agreement (until such time as the Agreement, by its terms, terminates), the HACSM Note, the HACSM Deed of Trust, and the Regulatory Agreement.

“Transfer Net Proceeds” shall mean the proceeds of any sale or other transfer, in whole or part, of the Property or Tenant’s interests therein, net only of (i) the reasonable and customary costs and expenses incurred in connection with such transfer; (ii) the amount of the financing which is satisfied out of such proceeds, (iii) the balance, if any, of the Deferred Developer Fee, (iv) the balance, if any, of loans to the Project made by the limited partners of Tenant, including interest thereon as provided in the Partnership Agreement, (v) the balance, if any, of operating loans or development loans made by the general partners of Tenant, including interest thereon as provided in the Partnership Agreement, and (vi) the return of capital contributions, if any, to the Project made by the general partners of Tenant.

ARTICLE 3. TERM.

The term of this Ground Lease (**“Term”**) shall commence on the date of recordation of the Memorandum of Ground Lease in the Official Records (**“Commencement Date”**) and, subject to the provisions set forth in this Ground Lease and applicable law that may result in an earlier termination of this Ground Lease, shall continue until the ninety-ninth (99th) anniversary of the Commencement Date.

ARTICLE 4. RENT.

4.1 Rent. On or before each Rent Payment Date, Tenant shall pay to Landlord Base Rent and Residual Rent; provided, however, that Residual Rent shall be due and payable (i) solely from _____ percent (___%) of the Residual Receipts (which percentage of Residual Receipts shall be divided proportionately with any other loan obtained by Tenant that has been approved by Landlord and is payable from Residual Receipts), and (ii) only after Tenant has fully repaid Landlord all amounts owed on the HACSM Note and has fully repaid any loan obtained by Tenant from the County of San Mateo. In the event that on any Rent Payment Date in which Residual Rent is due and payable, Residual Receipts for the Rental Period are insufficient to pay the full amount of

the Residual Rent, Tenant shall certify to Landlord, in writing, on or before the Rent Payment Date, that available Residual Receipts is insufficient to pay Residual Rent, and Tenant shall provide to Landlord any supporting documentation reasonably requested by Landlord to allow Landlord to verify the insufficiency. Any unpaid Residual Rent resulting from an insufficiency that has been verified by Landlord shall not accrue.

4.2 Payment of Rent. All Rent that becomes due and payable pursuant to this Ground Lease shall be paid to Landlord at the address listed in Section 23.1 or such other place as Landlord may from time to time designate by written notice to Tenant without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction. Except as expressly provided herein or in the Agreement, under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or to perform any act or obligation whatsoever or be under any obligation or liability hereunder or with respect to the Property.

4.3 Right to Audit. Tenant shall keep full and accurate books of account, records, and other pertinent data with respect to operations of the Project. Such books of account, records, and other pertinent data shall be kept for a period of five (5) years after the end of each Rental Period.

Landlord shall be entitled within three (3) years after the end of each Rental Period to inspect and examine all of Tenant's books of account, records, and other pertinent data. Tenant shall cooperate fully with Landlord in making the inspection. Landlord shall also be entitled, also within three (3) years after the end of each Rental Period, to an independent audit of Tenant's books of account, records, and other pertinent data.

4.4 Utilities. Tenant shall be responsible for the payment of all water, gas, electricity, refuse collection and disposal, internet service, broadband coverage, and/or other communication system fees, and all other utilities used by Tenant on the Property. Landlord expressly has no obligation regarding provision of or payment for utilities serving the Property.

4.5 Taxes and Assessments.

4.5.1 Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Property. In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord notices Tenant that by entering into this

Ground Lease, a possessory interest subject to assessment and collection of property taxes may be created. Tenant or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. If possessory interest taxes are assessed, Tenant agrees it is responsible for payment thereof and Landlord has no obligation or liability of any kind or nature relating to payment of property taxes. Tenant shall, at its sole cost and expense, seek exemption from, or contest the payment of, assessments and the collection of property taxes pursuant to Revenue and Taxation Code Section 214, or a successor statute. During the pendency of such contest or request, Tenant's non-payment of assessments or taxes when due shall not constitute a default hereunder if (i) the validity of such assessments and taxes is actively contested in good faith and by appropriate proceedings, (ii) Tenant has demonstrated to Landlord's reasonable satisfaction that leaving such assessments or taxes unpaid pending the outcome of such proceedings could not result in conveyance of the Property in satisfaction of such assessments or taxes or otherwise impair Landlord's estate in the Property, (iii) Tenant has furnished Landlord with a bond or other security satisfactory to Landlord in an amount not less than 100% of the applicable claim (including interest and penalties) and (iv) upon the final disposition of such proceedings, Tenant shall promptly pay all taxes and assessments then due, inclusive of any unpaid accrued penalties and interest. Landlord is a California nonprofit public benefit corporation and no property taxes will be or are legally assessable against its fee interest.

4.5.2 Payment of Taxes. Subject to any applicable exemptions, Tenant is responsible for and shall pay the real property and/or possessory interest taxes applicable to the Property during the Term of this Ground Lease. All such payments shall be made prior to the delinquency date of such payment. Tenant shall promptly furnish Landlord with satisfactory evidence that such taxes have been paid or that an exemption from such taxes has been obtained. If any such taxes paid by Tenant shall cover any period of time prior to or after the expiration of the Term, Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Ground Lease shall be in effect, and Landlord shall reimburse Tenant to the extent required. If Tenant shall fail to pay any such taxes, Landlord shall have the right to pay the same, in which case Tenant shall repay such amount to Landlord within ten (10) days after demand from Landlord together with interest at the rate set forth in Section 4.6.

4.5.3 Definition. As used herein, the term "real property tax" shall include any form of real estate tax or assessment (including, without limitation, on possessory

interests), general, special, ordinary, or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income, or estate taxes) imposed on the Property or any interest (including, without limitation, possessory interests) therein by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord or Tenant in the Property or in the real property of which the Property are a part, as against Landlord's right to rent or other income therefrom, and as against Landlord's business of leasing the Property. The term "real property tax" shall also include any tax, fee, levy, assessment, or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinbefore included within the definition of "real property tax," or (iii) which is imposed as a result of a transfer, either partial or total, of Landlord's interest in the Property or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (v) which is imposed by reason of this lease transaction, any modifications or changes hereto, or any transfers hereof.

4.5.4 Personal Property. Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment, and all other personal property of Tenant contained in the Property or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

4.5.5 Apportionment. If any of Tenant's said personal property shall be assessed with Landlord's real property, first Tenant shall advise the County of San Mateo Tax Assessor and Tax Collector of the same in writing, and Tenant shall pay Landlord the taxes attributable to Tenant not later than the later of (a) ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant's property, or (b) fifteen (15) days prior to the date said taxes are due and payable.

4.6 Overdue Interest. Any amount due to Landlord, if not paid when due and on or before expiration of the period for cure as set forth herein, after Landlord's delivery of notice thereof to Tenant, shall bear interest from the date due until paid at the lower of: (a) the reference or prime rate of Bank of America, N.T. & S.A., in effect from time to time plus three percent (3%); or (b) the highest rate of interest allowed under applicable usury law.

ARTICLE 5. POSSESSION OF PROPERTY.

5.1 Acceptance of Premises. Tenant hereby accepts the Property and acknowledges that the Property is in the condition called for by the Agreement and this Ground Lease.

5.2 Ownership of Improvements. Unless otherwise provided herein, during the Term of this Ground Lease, as it may be extended pursuant to the terms hereof, title to all Improvements, now existing or later made, on the Property are and shall be vested in Tenant as set forth in Article 11 hereof.

5.3 Surrender of Property.

5.3.1 Expiration or Termination. Tenant agrees that on the expiration or earlier termination of the Term, the leasehold estate hereby granted to Tenant may be terminated by Landlord. Upon such termination, the leasehold estate shall be forfeited and shall revert to Landlord, its successors and assigns, and all Improvements on the Property shall become the property of Landlord, its successors and assigns, free and clear from any liens or claims whatsoever (other than non-monetary liens previously approved or otherwise accepted in writing by Landlord), in good condition, reasonable wear and tear excepted, without further compensation therefor from Landlord to Tenant or any other person. Following any such expiration or termination, Tenant shall execute, acknowledge and deliver to Landlord a quitclaim deed, or other document required by a reputable title company, conveying all Tenant's right, title, and interest in and to the Property and Improvements to Landlord. In the event Tenant receives a written default notice relating to or arising from any Construction Loan, Take-Out Loan, or any mortgage, deed of trust, or security instrument secured by the leasehold interest granted hereunder, the Property or the Improvements, or from the Tax Credit Allocation Committee, the California Debt Limit Allocation Committee, or the Internal Revenue Service, then Tenant shall provide written notice of such alleged default to the Executive Director within five (5) days of receipt thereof. Tenant hereby irrevocably appoints Landlord as Tenant's agent and attorney-in-fact (such agency being coupled with an interest), and as such agent and attorney-in-fact Landlord may, without the obligation to do so, in Tenant's name, or in the name of Landlord, prepare, execute and file or record such statements, applications, and other documents necessary to create, perfect, or preserve any of Landlord's interests and rights in or to the Property and any of the Improvements, and, upon the earlier expiration or termination of the Term, take any other action required of Tenant. Notwithstanding any

other provisions herein, unless the Low Income Housing Tax Credit Extended Use Agreement is terminated pursuant to Internal Revenue Code Section 42(h)(6)(E)(i)(I) or otherwise as permitted by the Internal Revenue Code, Landlord, and its successors and assigns specifically agree that upon any termination of this Ground Lease prior to the end of the Low Income Housing Tax Credit Extended Use Period, Landlord, and its successors and assigns shall, for the balance of the term of the Low Income Housing Tax Credit Extended Use Period, continue to operate the Property such that one hundred forty-five (145) of the units in the Project shall be leased to households who, at the time of initial occupancy, have incomes of no more than eighty percent (80%) of the area median income, adjusted for family size, and that the rents charged such tenants shall not exceed the maximum low income housing tax credit rents for such households; provided, however, that nothing in this Section 5.3.1 shall affect in any way the income and rent restrictions set forth in the Regulatory Agreement. Tenant acknowledges that the Regulatory Agreement shall survive any termination of this Ground Lease.

5.3.2 Condition. On expiration or earlier termination of the Term and in furtherance of the provisions relating to surrender of the Property set forth in Section 5.3.1 above, Tenant shall peaceably and quietly leave and surrender the Property and the Improvements to Landlord in good order, condition, and repair, reasonable wear and tear and obsolescence excepted. Tenant shall leave in place and in good order, condition, and repair, all fixtures and machinery; except (if Tenant is not then in default under this Ground Lease) Tenant shall have the right to remove only Tenant-owned appliances, other unattached equipment, furniture and merchandise that Tenant shall have installed, which removal must be done without damage to the Property or Improvements. Landlord shall have the right to have the Property and the Improvements inspected at Tenant's cost to determine whether the Property and the Improvements have been properly maintained, repaired, and restored in accordance with the terms of this Ground Lease. That notwithstanding and subject to the exception of the environmental indemnities which shall survive any termination in perpetuity, Tenant shall not be responsible for the interior physical condition of individual occupied apartments on the termination or expiration of this Ground Lease.

5.3.3 Delivery of Documents. Contemporaneous with the expiration or earlier termination of the Term, as it may be extended pursuant to the terms hereof, and subject to the provisions of Sections 5.3.1 and 5.3.2 hereof, Tenant shall immediately deliver to Landlord the following:

(a) Such documents, instruments, and conveyances as Landlord may reasonably request to enable Landlord's ownership of the Property and the Improvements to be reflected of record, including, without limitation, a quitclaim deed in recordable form to the Property and the Improvements.

(b) If requested by Landlord, a lender's policy of title insurance (as provided in Section 7.2(s) of the Agreement), surety bond, or other security reasonably acceptable to Landlord insuring against all claims and liens against the Property and the Improvements other than those incurred by Landlord or accepted by Landlord in writing.

(c) All construction plans, surveys, permits, existing contracts for services, maintenance, operation, and any other documents relating to use, operation, management, and maintenance of the Improvements as may be in effect and/or in the possession of Tenant at the time and from time to time thereafter.

(d) All documents and instruments required to be delivered by Tenant to Landlord pursuant to this Section shall be in form reasonably satisfactory to Landlord, including without limitation such documents and instruments shall be complete, originals or true copies, and legible.

5.4 Abandonment. Tenant shall not abandon or vacate the Property or the Improvements at any time during the Term. If Tenant shall abandon, vacate, or otherwise surrender the Property or the Improvements, or be dispossessed (other than dispossession as the result of a Substantial Taking or a Taking and subject to Section 22.1 below) thereof by process of law or otherwise, the same shall constitute a default under this Ground Lease on the part of Tenant and, in addition to any other remedy available on the part of Landlord, any of Tenant's property left in, upon or about the Property or the Improvements (except for underground storage tanks) shall, at Landlord's option, be deemed to be abandoned and shall become the property of Landlord. The appointment of a receiver pursuant to a Mortgagee's exercise of its rights under a Mortgage, or the foreclosure of a Mortgage, shall not be a default under this Section.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES.

6.1 Landlord's Representations. Landlord represents and warrants to Tenant it owns the Property in fee simple and has the power and authority to enter into this Ground Lease and perform all obligations and agreements incidental or pertinent to this Ground Lease. Landlord makes no representation or warranty with respect to the condition of the Property or its fitness or availability for any particular use, and Landlord shall not be liable for any latent or patent defect therein. Landlord represents and warrants to Tenant as follows:

- (A) Landlord.** Landlord is a public body, corporate and politic. The execution, performance, and delivery of this Ground Lease by Landlord has been fully authorized by all requisite actions on the part of Landlord.
- (B) No Conflict.** To the best of Landlord's knowledge, Landlord's execution, delivery and performance of its obligations under this Ground Lease will not constitute a default or a breach under any contract, agreement, or order to which Landlord is a party or by which it is bound.
- (C) No Landlord Bankruptcy.** Landlord is not the subject of a bankruptcy proceeding.

As used herein, "Landlord's knowledge" shall be limited to the actual knowledge of Raymond Hodges, Executive Director, with no duty of inquiry or investigation.

6.2 Tenant's Representations. Tenant represents and warrants to Landlord it has examined the Property and acknowledges that it hereby accepts possession of the Property in its "AS IS" condition, with all faults and defects, including, without limitation, any physical condition or environmental condition of the Property. Tenant represents and warrants to Landlord as follows:

- (A) Tenant.** Tenant is a duly organized limited partnership formed within and in good standing under the laws of the State of California. Upon request by Landlord, Tenant shall deliver to Landlord true and complete copies of the original documents evidencing the

organization of Tenant, as amended to the date of this Ground Lease. Tenant has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Ground Lease by Tenant have been fully authorized by all requisite actions on the part of Tenant.

- (B) **No Conflict.** To the best of Tenant's knowledge, Tenant's execution, delivery and performance of its obligations under this Ground Lease will not constitute a default or a breach under any contract, agreement or order to which Tenant is a party or by which it is bound.
- (C) **No Tenant Bankruptcy.** Tenant is not the subject of a bankruptcy proceeding.

Tenant shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately give written notice of such fact or condition to Landlord.

ARTICLE 7. CONSTRUCTION OF THE IMPROVEMENTS.

7.1 Construction. Tenant shall construct the Improvements within the times and subject to all of the terms and conditions set forth in the Agreement and this Ground Lease and in accordance with plans and specifications (the "**Plans**") approved by Landlord pursuant to the Agreement. All Improvements shall be constructed in a good and workmanlike manner using materials of good quality, and shall comply with all applicable Governmental Requirements.

7.2 Construction Cost. Tenant shall bear the entire and sole cost of planning, designing, engineering, financing, constructing, supervising, and inspecting the Improvements, including all fees and mitigation measures.

7.3 Landlord's Right to Discharge Lien. If Tenant does not cause to be recorded the bond described in California Civil Code Section 3143 or otherwise protect the Property under any alternative or successor statute, and a final judgment has been entered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's, materialmen's, contractor's, or subcontractor's lien claim, and if Tenant fails to stay the execution of the judgment by lawful means or to pay the judgment, Landlord shall have the right, but not the duty, subject to the notice and cure rights of Mortgagees

and the Investor set forth elsewhere in this Ground Lease, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien or both. Tenant shall reimburse Landlord for all sums paid by Landlord under this Section, together with all Landlord's reasonable attorneys' fees and costs, plus interest on those sums, fees, and costs from the date of payment until the date of reimbursement at the rate set forth in Section 4.6.

7.4 Notice of Non-Responsibility. After the recordation of the Release of Construction Covenants for the Improvements in the Official Records, Tenant shall provide Landlord with prior written notice of not less than fifteen (15) days before commencing construction of any structural alteration of the Improvements, or any non-structural alteration which will cost more than Ten Thousand Dollars (\$10,000), and shall permit Landlord to record and post appropriate notices of non-responsibility on the Property. The foregoing Ten Thousand Dollar (\$10,000) limitation shall be increased each calendar year after the calendar year in which the Commencement Date occurs by the CPI Adjustment.

7.5 Notice of Completion. Promptly after completion of construction of the Improvements, Tenant shall file or cause to be filed a notice of completion. Tenant hereby appoints Landlord as Tenant's attorney-in-fact to file the notice of completion if Tenant fails to do so.

7.6 Subsequent Alterations. Following completion of the construction of the Improvements in accordance with the Plans, Tenant may from time to time, at its sole expense, make improvements and other alterations to the Property which Tenant reasonably determines to be beneficial, subject to compliance with all applicable Governmental Requirements and with no obligation on Landlord's part to allow any variances or deviations from the Land Use Entitlements or the Scope of Development. In addition, Tenant shall not make any alteration or improvement to the Property, the cost of which exceeds Fifty Thousand Dollars (\$50,000), without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. The foregoing dollar amount limitations shall be increased each calendar year after the calendar year in which the Commencement Date occurs by the CPI Adjustment. Tenant shall timely pay any obligation incurred by Tenant with respect to any such alterations or improvements that could become a lien against the Property and shall defend, indemnify, and hold Landlord harmless in connection therewith.

ARTICLE 8. USE OF THE PROPERTY.

8.1 Covenant to Use in Accordance with Regulatory Agreement and this Ground Lease. Tenant covenants and agrees for itself, its successors, assigns, and every successor in interest to Tenant's interest in the Property or any part thereof, that Tenant shall devote the Property to the uses specified in the Regulatory Agreement and this Ground Lease until the expiration of the Term hereof. The foregoing covenants shall run with the land.

8.2 Covenant to Pay Taxes and Assessments. Tenant shall pay prior to delinquency all ad valorem real estate taxes, special taxes, assessments and special assessments levied against the Property, subject to Tenant's right to contest any such tax in good faith and any property tax exemptions.

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

Tenant agrees for itself and any successor in interest that Tenant shall refrain from restricting the rental, sale, or lease of any portion of the Property, or contracts relating to the Property, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- (A) In deeds:** "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of

Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(B) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: “That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(C) In contracts: “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the

sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

The covenants established in this Ground Lease shall, without regard to technical classification and designation, be binding for the benefit and in favor of Landlord, its successors and assigns, the County and any successor in interest to the Property. The covenants against discrimination shall remain in effect in perpetuity.

ARTICLE 9. INSURANCE.

9.1 Tenant’s Insurance. Without limiting Landlord’s right to indemnification, Tenant shall secure and maintain insurance coverage as set forth in this Article 9.

9.2 Commercial General and Automobile Liability; Worker’s Compensation. Commencing on the Effective Date and continuing throughout the Term of this Ground Lease, Tenant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Landlord’s Executive Director, the following policies of insurance:

- (A)** Commercial General Liability Insurance covering bodily injury, property damage, personal injury, and advertising injury written on a per-occurrence and not a claims-made basis containing the following minimum limits: (i) general aggregate limit (including excess coverage) of Five Million Dollars (\$5,000,000.00); (ii) products-completed operations aggregate limit of Three Million Dollars (\$3,000,000.00); (iii) personal and advertising injury limit of Three Million Dollars (\$3,000,000.00); and (iv) each occurrence limit of Three Million Dollars (\$3,000,000.00). Said policy shall include the following coverages: (I) blanket contractual liability (specifically covering the indemnification clause contained in Section 9.8 below); (II) products and completed operations; (III) independent contractors;

(IV) Owner's broad form property damage; (V) severability of interest; (VI) cross liability; and (VII) property damage liability arising out of the so-called "XCU" hazards (explosion, collapse and underground hazards). The policy shall be endorsed to have the general aggregate apply to this Project only.

- (B) A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for Landlord and Tenant against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of carrying out the work or services contemplated in this Ground Lease, and Employers Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit for all damages arising from each accident or occupational disease.
- (C) A policy of comprehensive automobile liability insurance written on a per-occurrence basis in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit covering all owned, non-owned, leased and hired vehicles used in connection with the Work; provided, however, that if Tenant does not own vehicles it may satisfy this provision through a rider to its general liability coverage for non-owned/hired vehicles.

9.3 Builders Risk. Commencing on the Effective Date and continuing until Landlord issues a Release of Construction Covenants for the Project, Tenant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Landlord's Executive Director, Builder's Risk (course of construction) insurance coverage in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as the City issues a final certificate of occupancy for the Project, and storage and transportation risks. Such insurance shall protect/insure the interests of Tenant/owner and all of Tenant's contractor(s), and subcontractors, as each of their interests may appear. If such insurance includes an exclusion for "design error," such exclusion shall only be for the object or portion which failed. Landlord shall be a loss

payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

9.4 Property; Business Interruption; Boiler and Machinery Insurance.

Commencing on the date Landlord issues a Release of Construction Covenants for the Project and continuing throughout the term of this Ground Lease, Tenant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the Executive Director, the following insurance:

- (A) Insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard “all risk” form in general use in San Mateo County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquakes to the extent generally and commercially available at commercially reasonable rates, if such insurance is generally obtained for affordable Projects in the counties of San Mateo and San Francisco. Landlord shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.
- (B) Business interruption and extra expense insurance to protect Tenant and Landlord covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project caused by loss or damage to, or destruction of, any part of the insurable real property structures or equipment as a result of the perils insured against under the all risk physical damage insurance, covering a period of suspension, delay, or interruption of at least twelve (12) months, in an amount not less than the amount required to cover such business interruption and/or extra expense loss during such period.
- (C) Boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance.

9.5 Contractor Insurance Requirements. Tenant shall cause any general contractor with whom it has contracted for the performance of work on the Property to secure, prior to commencing any activities hereunder, and maintain insurance that satisfies all of the requirements of this Section 9.

9.6 Additional Requirements. The following additional requirements shall apply to all of the above policies of insurance:

- (A)** All of the above policies of insurance shall be primary insurance and, except the Worker's Compensation, Employer Liability insurance, and automobile liability insurance, shall name all of Landlord and County and Landlord and County Personnel as additional insureds on an ISO Form CG 20:10 (current version) or substantially similar form and not an ISO Form CG 20:09. The insurer shall waive all rights of subrogation and contribution it may have against Landlord and County and Landlord and County Personnel and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice to Landlord. In the event any of said policies of insurance are cancelled, Tenant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Executive Director. Not later than the Effective Date, Tenant shall provide the Executive Director with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders shall be subject to the reasonable approval of the Executive Director.
- (B)** The policies of insurance required by this Ground Lease shall be satisfactory only if issued by companies of recognized good standing authorized to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Executive Director due to unique circumstances.

- (C) The Executive Director is hereby authorized to increase, reduce, or otherwise modify Tenant's insurance requirements set forth herein in the event he or she determines, in his or her sole and absolute discretion, that such increase, reduction, or modification is warranted by changes in construction costs, inflationary changes after the Effective Date, or otherwise, and is consistent with reasonable commercial practices.
- (D) Tenant agrees that the provisions of this Section shall not be construed as limiting in any way Landlord's right to indemnification or the extent to which Tenant may be held responsible for the payment of damages to any persons or property resulting from Tenant's activities or the activities of any person or persons for which Tenant is otherwise responsible.

9.7 Remedies for Defaults Re: Insurance. In addition to any other remedies Landlord may have if Tenant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Landlord may, at its sole option, after fifteen (15) days' Notice to Tenant:

- (A) Obtain such insurance and charge Tenant the amount of the premium for such insurance, in which event Tenant shall promptly remit such sum to Landlord;
- (B) Withhold any payment(s) which become due to Tenant hereunder until Tenant demonstrates compliance with the requirements hereof; and
- (C) Declare Tenant in Default and exercise its rights and remedies under this Ground Lease.

Exercise of any of the above remedies, however, is an alternative to other remedies Landlord may have and is not the exclusive remedy for Tenant's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which Tenant may be held responsible for payment of damages to persons or property resulting from Tenant's contractors or any subcontractor's performance under this Ground

Lease.

9.8 Indemnification. Tenant shall defend, indemnify, assume all responsibility for, and hold Landlord and County and Landlord and County Personnel harmless from, all claims, demands, damages, defense costs (including attorneys' fees and costs) and liability of any kind or nature (any of the foregoing, a "**Loss**") arising out of or in connection with Tenant's activities, acts, errors, omissions, performance, and work under this Ground Lease, whether such activities or performance thereof be by Tenant or by anyone directly or indirectly employed, controlled, or contracted by Tenant and whether such damage shall accrue or be discovered before or after termination of this Ground Lease, including but not limited to any damages to property or injuries to persons, including accidental death, to the extent arising out of or in connection with any of the foregoing. Tenant shall not be liable for any such Loss or indemnification therefore to the extent occasioned by the active negligence or willful misconduct of any of Landlord and County and Landlord and County Personnel.

ARTICLE 10. MAINTENANCE; REPAIRS

Tenant shall maintain the Property and all improvements thereon, including lighting and signage, in good condition, free of debris, waste, and graffiti, and in compliance with all applicable laws and regulations, including, without limitation, HUD's Housing Quality Standards. Tenant shall maintain in accordance with the "Maintenance Standards," as hereinafter defined, the Improvements and landscaping on the Property. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Property, and any and all other Improvements on the Property. To accomplish the maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Ground Lease.

Tenant and its maintenance staff, contractors or subcontractors shall comply with the following standards (the "**Maintenance Standards**"):

- (A) The Property shall be maintained in conformance and in compliance with the approved plans and permits, and reasonable maintenance standards for similar, neighboring structures, including but not limited

to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curb line. The Property shall be maintained in good condition and in accordance with the custom and practice generally applicable to comparable apartment complexes.

- (B)** Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

- (C)** Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris, or other matter which is unsafe or unsightly; removal of all graffiti, trash, litter, and other debris from improvements; removal of all trash, litter, and other debris from landscaping prior to mowing; and clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves, and other debris are properly disposed of by maintenance workers.

Upon Landlord's written notification to Tenant of any maintenance deficiency, Tenant shall have two (2) days within which to correct, remedy, or cure the deficiency, or such longer period as is reasonably necessary to complete the cure, provided such correction, remedy, or cure is commenced within such two (2) day period and diligently prosecuted to completion. If the written notification states the problem is urgent relating to the public health and safety of the City or Landlord, then Tenant shall have one (1) day to rectify the problem, or such longer period as is reasonably necessary to complete the cure. In the event Tenant does not maintain the Property in the manner set forth herein and in accordance with the Maintenance Standards, Landlord shall have, in addition to any other rights and remedies hereunder, the right to maintain the Property, or to contract for the correction of such deficiencies, after Notice to Tenant, and Tenant shall be responsible for the payment of all such costs incurred by Landlord.

ARTICLE 11. OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS.

11.1 Ownership During Term.

11.1.1 Improvements. Subject to the provisions of Sections 5.3.1 and 5.3.2 hereof, all Improvements on the Property as permitted or required by this Ground Lease shall, during the Term, be and remain the property of Tenant, and Landlord shall not have title thereto. Tenant shall not, however, demolish, remove, sell, encumber, lease, assign, or otherwise convey any Improvements from the Property except as permitted herein.

11.1.2 Personal Property. All personal property, furnishings, fixtures and equipment, including, without limitation, Tenant-owned appliances, which are not so affixed to the Property or the buildings thereon as to require substantial damage to the buildings upon removal thereof shall constitute personal property. If Tenant is not then in default under this Ground Lease, at any time during the Term and at termination thereof, Tenant shall have the right to remove any and all such personal property, furnishings, fixtures and equipment; provided, that Tenant repairs any damage to the Property or the Improvements caused by such removal.

11.1.3 Basic Building Systems. For purposes of this Ground Lease, the personal property, furnishings, fixtures and equipment described in this Section 11.1 shall not include those major building components or fixtures necessary for operation of the basic building systems such as, but not limited to, the elevators, plumbing, sanitary fixtures, lighting fixtures, electrical fixtures, and the heating and central air-cooling systems.

11.2 Ownership at Expiration or Termination.

11.2.1 Property of Landlord. In accordance with provisions of Sections 5.3.1 and 5.3.2 hereof, and except as provided in Section 11.2.2, all Improvements which constitute or are a part of the Property shall, upon termination of this Ground Lease, become (without the payment of compensation to Tenant or others) the property of Landlord free and clear of all claims and encumbrances on such Improvements by Tenant, and anyone claiming under or through Tenant, except for such title exceptions permitted or required during the Term with Landlord's prior written consent. Tenant shall then quitclaim to Landlord any and all rights, interests and claims to the Improvements. Tenant agrees to and shall defend, indemnify, and hold Landlord harmless from and

against all claims, liability, and loss which may arise from the assertion of any such claims and any encumbrances on such Improvements (except to the extent such claims arise due to Landlord's actions) and except for such title exceptions permitted or required during the Term.

11.2.2 Removal by Tenant. Tenant shall not be required or permitted to remove the Improvements, or any of them, at the expiration or sooner termination of the Term; provided, however, that, subject to the provisions of Section 5.3.2 hereof, within thirty (30) days following the expiration or sooner termination of the Term, Tenant may remove all personal property, furniture, and equipment.

11.2.3 Unremoved Property. Any personal property, furnishings or equipment not removed by Tenant pursuant to Section 11.2.2 hereof, shall, without compensation to Tenant, become Landlords' property, free and clear of all claims to or against them by Tenant or any third person, firm or entity arising by, through or under Tenant. Landlord shall have no duty to store such items, provide any notices to Tenant, sell or dispose of such items, and/or remit any proceeds from any such sale or disposal to Tenant in accordance with otherwise applicable statutory procedures, and Tenant hereby waives any statutory or other right Tenant might have with respect thereto.

11.2.4 Maintenance and Repair of Improvements. Subject to the provisions of this Ground Lease concerning condemnation, alterations, damage, and destruction, Tenant agrees to assume full responsibility for the operation and maintenance of the Property and the Improvements and all fixtures and furnishings thereon or therein throughout the Term hereof without expense to Landlord, and to perform all repairs and replacements necessary to maintain and preserve the Property, the Improvements, fixtures, and furnishings in a decent, safe and sanitary condition consistent with good practices and in compliance with all applicable laws. Tenant agrees that Landlord shall not be required to perform any maintenance, repairs, or services, or to assume any expense not specifically assumed herein in connection with the Property and the Improvements thereon unless specifically required under the terms of this Ground Lease. Except as otherwise provided in this Section 11.2 and in Section 11.4, the condition of the Improvements required to be maintained hereunder upon completion of the work of maintenance or repair shall be equal or better in quality and use to the condition of such Improvements before the event giving rise to the work.

11.3 Waste. Subject to the alteration rights of Tenant and damage, destruction, or condemnation of the Property or any part thereof, Tenant shall not commit or suffer to be committed any waste of the Property or the Improvements, or any part thereof.

Tenant agrees at all times to keep the Property and the Improvements clean and clear of graffiti, refuse, and obstructions, to store all garbage, trash, and rubbish in a safe and sanitary manner, and to promptly and properly dispose of all garbage, trash, and rubbish.

11.4 Alteration of Improvements. Except as provided in Section 7.1, Tenant shall not make or permit to be made any material exterior alteration of, addition to or change in, the Improvements which would affect the exterior elevations (including materials selection and color) or the size, bulk, and scale of the Property, other than routine maintenance and repairs, nor demolish all or any part of the Improvements, without the prior written consent of Landlord, which consent Landlord may withhold in its reasonable discretion. Nothing herein shall prohibit interior alterations or decorations, or the removal and replacement of interior improvements consistent with the specified use of the Property. In requesting consent for such exterior improvements as required by the foregoing, Tenant shall submit to Landlord detailed plans and specifications of the proposed work and an explanation of the need and reasons thereof. Tenant may make such other improvements, alterations, additions or changes to the Improvements which do not materially affect the exterior elevations (including materials selection and color) or the size, bulk, and scale thereof without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion, and provided that Tenant has obtained all required governmental permits and approvals therefor and such improvements, alterations, additions, or changes comply with applicable laws.

Notwithstanding the prohibition in this Section 11.4, Tenant may make such changes, repairs, alterations, improvements, renewals or replacements to the exterior elevations, materials, size, bulk, or scale of the Improvements as are required (a) by reason of any law, ordinance, regulation, or order of a competent government authority, (b) for the continued safe and orderly operation of the Property, or (c) to continue to receive the Tax Credits or any other government funding that may be available to the Project.

ARTICLE 12. SIGNS AND MARKETING.

Tenant shall not place or suffer to be placed on the Property or upon the roof or any exterior door or wall or on the exterior or interior of any window of the Improvements, any sign, awning, canopy, marquee, advertising matter, decoration, lettering, or other thing of any kind (exclusive of the signs, awnings, and canopies, if any, which may be provided for in the Plans) without the written consent of the Executive Director first had and obtained, which consent may be withheld in the Executive Director's sole and absolute discretion.

ARTICLE 13. DAMAGE OR DESTRUCTION OF PROPERTY OR IMPROVEMENTS.

13.1 Tenant's Repair Obligation.

13.1.1 In case of damage to or destruction of the Property or the Improvements, or any part thereof, by fire or other cause at any time during the Term of this Ground Lease, Tenant, if and to the extent insurance proceeds are available, shall restore the same as nearly as possible to their value, condition, and character immediately prior to such damage or destruction. Such restoration shall be commenced with due diligence and in good faith, and prosecuted with due diligence and in good faith, unavoidable delays excepted.

13.1.2 In case of damage to or destruction of the Improvements by fire or other cause resulting in a loss exceeding in the aggregate Ten Thousand Dollars (\$10,000), Tenant shall promptly give written notice thereof to Landlord.

13.1.3 In the event insurance proceeds are insufficient to restore the Property or the Improvements to its/their value, condition, and character immediately prior to such damage or destruction, then, subject to the rights of the Mortgagees, either Tenant or Landlord shall have the right to terminate this Ground Lease by providing written notice thereof to the other party.

13.2 Tenant's Restoration of Premises.

13.2.1 If, during the Term, the Improvements are damaged or destroyed, and the total amount of loss does not exceed thirty-three percent (33%) of the replacement value of the Improvements, Tenant shall make the loss adjustment with the insurance company insuring the loss, with the approval of Landlord, which approval shall

not be unreasonably withheld or delayed. The proceeds shall be paid directly to a Mortgagee, if any, and if there is not a Mortgagee, to Landlord and Tenant for the sole purpose of making the restoration of the Improvements in accordance with this Article 13.

13.2.2 If, during the Term, the Improvements are damaged or destroyed, and the total amount of loss exceeds thirty-three percent (33%) of the replacement value of the Improvements, Tenant shall make the loss adjustment with the insurance company insuring the loss, with the approval of Landlord, which approval shall not be unreasonably withheld or delayed, and the insurance company shall immediately pay the proceeds to a Mortgagee, if any, and if there is not a Mortgagee, then to a bank or trust company designated by Landlord and approved by Tenant (such Mortgagee or other institution, the “**Insurance Trustee**”), which approval shall not be unreasonably withheld or delayed. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

(a) The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Tenant and approved by Landlord as construction progresses, for payment of the cost of restoration. A ten percent (10%) retention fund shall be established that will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the Property and the Improvements are free of all mechanics’ liens and lienable claims;

(b) Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant and approved by Landlord (which approval shall not be unreasonably withheld, conditioned, or delayed) showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the Insurance Trustee out of the trust fund;

(c) If, after the work of restoration has commenced, the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration, Tenant shall deposit the amount of the deficiency with the Insurance Trustee within ten (10) days after receipt of request for payment of such amount from the Insurance Trustee, which

request shall be made by the Insurance Trustee promptly after it is determined there will be a deficiency;

(d) If the Insurance Trustee has received notice from Landlord that Tenant is in default under this Ground Lease, then, subject to the lien of a Mortgagee's Mortgage and the Mortgagee's prior written consent, the Insurance Trustee shall pay to Landlord an amount sufficient to cure such default as specified in Landlord's notice to the Insurance Trustee;

(e) Any amounts remaining after making the payments hereinabove referred to in clauses (a), (b), (c), and (d) shall be paid to any leasehold Mortgagee to the extent (x) required by any Mortgage and (y) such leasehold Mortgagee makes written demand therefor to the Insurance Trustee;

(f) Any undisbursed funds remaining after compliance with all of the provisions of this Section 13.2 shall, if and to the extent required by any Mortgage, be delivered to the Mortgagee, and if there is no leasehold Mortgagee, to Tenant; and

(g) All actual costs and charges of the Insurance Trustee shall be paid by Tenant. If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, Landlord shall substitute a new Insurance Trustee in the manner described in this Section.

13.2.3 Both parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this Section 13.2.

13.3 Procedure for Restoring Improvements.

13.3.1 If and to the extent Tenant is obligated to restore the Improvements pursuant to this Article 13, Tenant shall restore the Improvements substantially in accordance with the Plans, to the extent insurance proceeds are available. Within forty-five (45) days after the date of such damage or destruction, Tenant, at its cost, shall prepare and deliver to Landlord final plans and specifications and working drawings complying with applicable laws that will be necessary for such restoration. Such plans and specifications shall specify differences from the Plans. The plans and specifications and working drawings are subject to the approval of Landlord only insofar as they vary from the Plans; provided that nothing in this Ground Lease is intended or shall be

interpreted to release Tenant from the obligations to obtain any applicable governmental permits or comply with applicable laws with respect thereto. Landlord shall have twenty (20) days after receipt of the plans and specifications and working drawings to either approve or disapprove the plans and specifications and working drawings and return them to Tenant. If Landlord disapproves the plans and specifications and working drawings, Landlord shall notify Tenant of its objections in writing, specifying the objections clearly and stating what modifications are required for Landlord's approval. Tenant acknowledges that the plans and specifications and working drawings shall be subject to approval of the appropriate government bodies and that they will be prepared in such a manner as to obtain that approval.

13.3.2 The restoration shall be accomplished as follows:

(a) Tenant shall complete the restoration with reasonable diligence and in all events within eighteen (18) months after final plans and specifications and working drawings have been approved by the appropriate government bodies and all required permits have been obtained.

(b) Tenant shall retain a licensed contractor that is bondable. The contractor shall be required to carry public liability and property damage insurance, builders risk insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction in accordance with Article 9. Such insurance shall contain waiver of subrogation clauses in favor of Landlord and Tenant in accordance with the provisions of and to the extent required by Section 9.6.

(c) Tenant shall notify Landlord of the date of commencement of the restoration not later than ten (10) days before commencement of the restoration to enable Landlord to post and record notices of non-responsibility. The contractor retained by Tenant shall not commence construction until a completion bond and a labor and materials bond have been delivered to Landlord to insure completion of the construction.

(d) Tenant shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption to the Property and the Improvements.

(e) On completion of the restoration, Tenant shall immediately record a notice of completion.

(f) The restoration shall not be commenced until sums sufficient to cover the cost of restoration are placed with the Insurance Trustee as provided in Section 13.2.

13.4 Mortgagee Protection. The following provisions are for the protection of a Mortgagee and shall, notwithstanding anything contained in this Ground Lease to the contrary, control:

13.4.1 Insurance. Any insurance proceeds payable from any policy of insurance (other than liability insurance) required by the Ground Lease shall be paid to and applied by the Mortgagees, if any, in accordance with their respective Mortgage. Each Mortgagee, if any, shall have the right to participate in all adjustments, settlements, negotiations, or actions with the insurance company regarding the amount and allocation of any such insurance proceeds. Any insurance policies permitted or required by this Ground Lease shall name each Mortgagee, if any, as an additional insured or loss payee, as appropriate, if required by such Mortgagees.

13.4.2 Restoration. Tenant shall have no obligation to restore or repair the Improvements following the occurrence of any casualty for which insurance is not required under this Ground Lease. The Mortgagee, if any, and if it exercises any of its remedies set forth in this Ground Lease to acquire the leasehold estate hereunder, shall have no obligation to restore or repair damage to the Improvements that cost in excess of available insurance proceeds. Tenant shall have no obligation to restore or repair damage to the Improvements if the casualty occurs during the last five (5) years of the Ground Lease term. In the event such a loss occurs in the last five (5) years, then, at the election of Tenant, with the prior written consent of the Mortgagee, if any, insurance proceeds shall be used, first, to clear the Property of the damaged Improvements and any debris, and second, to reduce or pay in full the Mortgage, with any excess being payable as provided in this Ground Lease.

ARTICLE 14. EMINENT DOMAIN.

14.1 Notice. The party receiving any notice of the kind specified in this Section 14.1 shall promptly give the other party notice of the receipt, contents and date of the notice received. For purposes of this Article 14, the term "Notice" shall include:

- (a) Notice of Intended Taking;

(b) Service of any legal process relating to condemnation of the Property or the Improvements;

(c) Notice in connection with any proceedings or negotiations with respect to such condemnation; or

(d) Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation.

14.2 Representation in Proceedings or Negotiations. Landlord and Tenant shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of their claims. No agreements or settlement with or sale or transfer to the condemning authority shall be made without the consent of Landlord, but, as to its reversionary interest only, Landlord may enter into such agreement, settlement, sale, or transfer without the consent of Tenant. Landlord and Tenant each agree to execute and deliver to the other any instruments which may be required to effectuate or facilitate the provisions of this Ground Lease relating to condemnation.

14.3 Total Taking.

14.3.1 In the event of a Total Taking, this Ground Lease shall terminate as of the date of the Taking.

14.3.2 If this Ground Lease is terminated pursuant to this Section 14.3, the Award for such Taking shall be apportioned and distributed as follows:

(a) First, to the Mortgagees, if any, to the extent of their respective Mortgages;

(b) Second, to Landlord, a sum equal to the fair market value of Landlord's fee interest in the Property (subject to the remaining Term and the Rent reserved) on the date immediately preceding the Taking or threat of condemnation, as determined by the appraisal method set forth in Section 14.9. The parties shall commence said appraisal by the earlier of ten (10) days after Tenant's receipt of a Notice of Intended Taking or ten (10) days after the date of the Taking;

(c) Third, to Tenant, a sum equal to the fair market value of the Improvements made by Tenant as of the date immediately preceding the Taking or threat

of condemnation plus the residual value of the Term, subject to Rent reserved, plus any part of the Award attributable to the Tax Credits and any other governmental funding provided to the Project, other than funding provided to the Project by Landlord;

(d) Fourth, to Landlord, the remainder, if any.

14.4 Substantial Taking.

14.4.1 In the event of a Taking that does not constitute a Total Taking, Partial Taking, or Temporary Taking, Landlord and Tenant shall meet and confer to determine whether the Taking is material and, in the event Landlord and Tenant determine that such Taking is material, then, subject to the rights of the Mortgagees, either of Landlord or Tenant may terminate this Ground Lease. In the event Landlord and Tenant do not agree as to whether the Taking is material, then such decision shall be made solely by Landlord, in Landlord's reasonable judgment. In such event, if Landlord determines that the Taking is material, then, subject to the rights of the Mortgagees, Landlord may terminate this Ground Lease. In the event this Ground Lease is terminated pursuant to this Section 14.4.1, the terminating party shall give written notice of its election to terminate to the other party within thirty (30) days after the parties have met and conferred.

14.4.2 In the event this Ground Lease is terminated pursuant to Section 14.4.1 above, such termination shall be as of the time when the Taking entity takes possession of the portion of the Property and the Improvements taken. In such event, the Award for such Substantial Taking (including any award for severance, consequential, or other damages which will accrue to the portion of the Property and/or the Improvements not taken) shall be apportioned and distributed as follows:

(a) First, to the Mortgagees, if any, to the extent of their respective Mortgages;

(b) Second, to Landlord, a sum equal to the fair market value of the Property taken (subject to the remaining Term and Rent reserved) on the date immediately preceding the Taking as determined by the appraisal process provided for in Section 14.9 commenced as provided in Section 14.3.2;

(c) Third, to Landlord, an amount equal to the portion of the award for severance, consequential, or other damages which accrued to the portion of the

Property or Improvements not taken;

(d) Fourth, to Tenant, a sum equal to the fair market value of the Improvements made by Tenant as of the date immediately preceding the Taking or threat of condemnation, plus the residual value of the Term, subject to Rent reserved, plus any part of the Award attributable to the Tax Credits and any other governmental funding provided to the Project, other than funding provided to the Project by Landlord;

(e) Fifth, to Landlord, the remainder, if any.

14.5 Partial Taking.

14.5.1 In the event of a Partial Taking, this Ground Lease shall continue in full force and effect, and there shall be no abatement in or reduction of any of Tenant's obligations hereunder.

14.5.2 The Award for such Partial Taking shall be apportioned and distributed first to the Mortgagees, if any, to the extent of their respective Mortgages, then to Landlord and Tenant in proportion to the fair market value of their respective interests; provided, however, that any part of the Award attributable to the Tax Credits or other governmental funding provided to the Project, other than funding provided to the Project by Landlord, shall belong to Tenant.

14.5.3 Any Award for severance, consequential, or other damages which accrues by reason of the Partial Taking to the portion of the Property or the Improvements not taken shall be distributed first to the Mortgagees, if any, to the extent of their respective Mortgages, and the remainder, if any, shall be payable to Landlord and Tenant in proportion to the fair market value of their respective interests.

14.6 Obligation to Repair on Partial Taking. Promptly after any Partial Taking, Tenant shall, to the extent of the Award received by Tenant and in the manner specified in the provisions of this Ground Lease, repair, alter, modify, or reconstruct the Improvements and/or other improvements on the Property so as to make them usable for the designated purpose and capable of producing a fair and reasonable net income.

14.7 Temporary Taking.

14.7.1 In the event of a Temporary Taking of the whole or any part of the Property and/or Improvements, the Term shall not be reduced or affected in any way and

Tenant shall continue to pay in full any sum or sums of money and charges herein reserved and provided to be paid by Tenant, and, subject to the other provisions of this Section 14.7, Tenant shall be entitled to any Award or payment for the temporary use of the Property and/or Improvements prior to the termination of this Ground Lease and Landlord shall be entitled to any award or payment for such use after the termination of this Ground Lease.

14.7.2 If, after the occurrence of a temporary taking, possession of the Property and/or Improvements shall revert to Tenant prior to the expiration of the Term, Tenant shall, to the extent of the amount of any award or payment, unless at such time there remains less than five (5) years in the Term, restore the Property and/or Improvements and in all other respects indemnify and hold Landlord harmless from the effects of such Taking so that the Property and/or Improvements in every respect shall upon completion of such restoration be in the same condition as they were prior to the taking thereof.

14.7.3 Any Award or payment for damages or cost of restoration made on or after the termination of this Ground Lease shall be paid first to the Mortgagees, if any, to the extent of their respective Mortgages, then to Landlord absolutely, together with the remaining balance of any other funds paid to Tenant for such damages or cost of restoration and Tenant shall thereupon be excused from any obligation to restore the Property and/or Improvements upon the termination of such Temporary Taking except that any obligation that may have accrued for Tenant to restore the Property and/or Improvements prior to the commencement of said Temporary Taking shall continue to be the obligation of Tenant

14.8 Mortgagee Protection. Notwithstanding anything contained in this Ground Lease to the contrary, any and all condemnation proceeds shall be paid first to the Mortgagees, if any, to be applied to reduce their respective Mortgages if required by the applicable mortgage documents.

14.9 Appraisal. Whenever an appraisal of the Property is called for under the terms of this Ground Lease, the parties shall use the following procedure:

14.9.1 Appointment of Appraiser. Within ten (10) days after notice from Landlord to Tenant, Landlord and Tenant shall each appoint an MAI appraiser to participate in the appraisal process provided for in this Section 14.9 and shall give written

notice thereof to the other party. Upon the failure of either party so to appoint, the non-defaulting party shall have the right to apply to the Superior Court of San Mateo County, California, to appoint an appraiser to represent the defaulting party. Within ten (10) days of the parties' appointment, the two (2) appraisers shall jointly appoint a third MAI appraiser and give written notice thereof to Landlord and Tenant or, if within ten (10) days of the appointment of said appraisers the two (2) appraisers shall fail to appoint a third, then either party hereto shall have the right to make application to said Superior Court to appoint such third appraiser.

14.9.2 Determination of Fair Market Value.

(a) Within thirty (30) days after the appointment of the third appraiser, the appraisers shall determine the fair market value of the Property and the Improvements in accordance with the provisions hereof, and shall execute and acknowledge their determination of fair market value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(b) The appraisers shall determine the fair market value of the Property and the Improvements as of the date of Landlord's notice referred to in Section 14.9.1 above, based on sales and/or rentals of comparable properties in the area in which the Property is located, subject to the restrictions encumbering the Property. If, however, in the judgment of a majority of the appraisers, no such comparable sales and/or rentals are available, then the appraisal shall be based on the assumption that the Property is available for immediate sale and development for the purposes and at the density and intensity of development permitted under the zoning, subdivision, and land use planning ordinances and regulations applicable to the Property in effect on the Commencement Date of this Ground Lease, and any changes or amendments thereto or modification or variance from the provisions thereof or conditional use permits which could reasonably be anticipated to have been granted or approved as of the date of this Ground Lease.

(c) If a majority of the appraisers are unable to agree on fair market value within thirty (30) days of the appointment of the third appraiser, the three (3) appraisals shall be added together and their total divided by three (3). The resulting quotient shall be the fair market value of the Property and the Improvements. If, however, the low appraisal and/or high appraisal is or are more than ten percent (10%) lower and/or higher than the middle appraisal, the low and/or high appraisal shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together

and their total divided by two (2). The resulting quotient shall be the fair market value of the Property and the Improvements. If both the low and high appraisals are disregarded, the middle appraisal shall be the fair market value of the Property.

14.9.3 Payment of Fees. Each of the parties hereto shall (a) pay for the services of its appointee, (b) pay one-half (1/2) of the fee charged by the appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisal.

ARTICLE 15. COMPLIANCE WITH LAWS; ENVIRONMENTAL MATTERS.

15.1 Compliance With Laws. Tenant shall comply with all applicable Governmental Requirements.

15.2 AS-IS; Release. Tenant acknowledges that Tenant is leasing the Property from Landlord solely in reliance on its own investigation, and that no representations and/or warranties of any kind whatsoever, express or implied, have been made by any of Landlord and County and Landlord and County Personnel.

AS A MATERIAL PART OF THE CONSIDERATION FOR LANDLORD'S AGREEMENT TO LEASE THE PROPERTY TO TENANT, TENANT AGREES TO ACCEPT THE PROPERTY "AS IS" AND "WHERE IS", WITH ALL FAULTS. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN OR IN THE AGREEMENT AND SUBJECT TO APPLICABLE CALIFORNIA LAW, NO WARRANTY OR REPRESENTATION IS MADE BY LANDLORD WITH RESPECT TO THE PROPERTY AS TO (I) FITNESS FOR ANY PARTICULAR PURPOSE, (II) MERCHANTABILITY, (III) CONDITION, (IV) ABSENCE OF DEFECTS OR FAULTS, (V) ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, (VI) FLOODING, OR (VII) COMPLIANCE WITH LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY, AND THE ENVIRONMENT, AS THEY MAY APPLY TO THE CURRENT CONDITION OF THE PROPERTY OR TENANT'S INTENDED DEVELOPMENT, CONSTRUCTION OR USE, OR FOR ANY OTHER PURPOSE. TENANT ACKNOWLEDGES THAT TENANT WILL BE RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE AND LEGAL CONDITION OF THE PROPERTY.

Except for obligations expressly assumed by Landlord in this Ground Lease or in the Agreement, Tenant will be deemed to have waived and released Landlord of and from any and all claims, causes of action, damages or losses that may be incurred by Tenant concerning the condition of the Property, whether known or unknown as of the Commencement Date, except for a breach or default by Landlord of its obligations under this Ground Lease or any fraud or intentional misrepresentation by Landlord. Such waiver will be deemed to be a release of all rights held by Tenant under California Civil Code §1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant's Initials _____

15.3 Indemnity. Tenant shall save, protect, defend, indemnify, and hold harmless Landlord and County and Landlord and County Personnel and each of their successors and assigns (collectively, "**County Indemnified Parties**") from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "**Liabilities**") which may now or in the future be incurred or suffered by any of County Indemnified Parties by reason of, resulting from, in connection with, or existing in any manner whatsoever as a direct or indirect result and to the extent of (i) Tenant's failure to comply with all applicable Governmental Requirements, including, without limitation, the RAP Amendment and any additional requirements of DTSC, including, without limitation, any existing or future land use covenants required by DTSC; (ii) Tenant's placement on or under the Property of any Hazardous Materials or Hazardous Materials Contamination; (iii) Tenant's breach of its obligations under Section 15.5 or Section 15.6 hereinafter; or (iv) any Liabilities incurred after the Commencement Date under any Governmental Requirements relating to the acts described in the foregoing clauses (i), (ii), and (iii). Except for obligations assumed by Tenant in Section 15.5 and Section 15.6 hereinafter, Tenant shall have no indemnity obligation to County

Indemnified Parties for any Liabilities arising from or related to County's failure to comply with any Governmental Requirements, whether known or unknown, that existed or arose prior to the Commencement Date regardless of when such Liabilities may accrue.

15.4 Landlord Indemnity. Landlord shall save, protect, defend, indemnify, and hold harmless Tenant and its successors and assigns ("**Tenant Indemnified Parties**") from and against any and all Liabilities which may now or in the future be incurred or suffered by any of Tenant Indemnified Parties as a result of third party claims for bodily injury or property damage arising from Hazardous Materials present or released at the Property prior to the Commencement Date.

15.5 Duty to Prevent Hazardous Materials Contamination. Tenant shall take commercially reasonable actions to prevent the exacerbation of an existing release of any Hazardous Materials located on the Property and the release of new Hazardous Materials to the Property after the Commencement Date. For the avoidance of ambiguity only, nothing in the previous sentence shall limit Tenant from maintaining Hazardous Materials existing on the Property prior to the Commencement Date or consolidating such Hazardous Materials on the Property, all to the extent permitted by law. Tenant's duty to prevent Hazardous Materials Contamination shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Tenant shall comply with any state or local Government Requirements pertaining to apartment complexes in San Mateo County, California, as respects the disclosure, permitting, notification, storage, use, removal, and disposal of Hazardous Materials.

15.6 Obligation to Remediate Premises. All final reports prepared by environmental consultants documenting the results of environmental assessments of the Property performed by either Party shall be submitted to DTSC for review promptly upon completion. Tenant acknowledges that, as of the Commencement Date and except for any portion of "HACSM's Remediation Obligation" (as that term is defined in the AHPDA) not fully performed prior to the Commencement Date, Landlord shall have no further obligation to undertake any action to address or respond to Hazardous Materials present on, under, or about the Premises regardless of when the Hazardous Materials first occurred or when they were first discovered. After the Commencement Date, except as specifically excepted by the Agreement, any remediation, investigation, mitigation or other response action (collectively "**Response Action**") shall be performed by Tenant at Tenant's sole cost and expense without any reimbursement from Landlord, including (i) all Response Actions required by any federal, state, regional, or local governmental

agency or political subdivision or to fulfill any Governmental Requirements and (ii) all actions necessary to use the Property for the purposes contemplated by the Regulatory Agreement, the Agreement, and this Ground Lease; and in either case (i) or (ii), regardless of whether the Hazardous Materials or Hazardous Materials Contamination that is the subject of such Response Action arose before or after the Commencement Date and regardless of when it was first discovered. Such Response Actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies, risk assessments or other reports, and the performance of any cleanup, remedial, removal, mitigation or restoration work.

15.7 Environmental Inquiries. Tenant, when it has received any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, or cease and desist orders related to Hazardous Materials or Hazardous Materials Contamination from any governmental agency, or when Tenant is required by any regulatory authority to report any violation or potential violation of any Governmental Requirement pertaining to Hazardous Materials or Hazardous Materials Contamination (collectively, “**Environmental Inquiries**”), shall concurrently notify the Executive Director, and provide to him/her a copy or copies of the Environmental Inquiries.

In the event of a release of any Hazardous Materials into the environment in violation of law, Tenant shall, as soon as possible after it becomes aware of the release, furnish to the Executive Director a notification that the release occurred and a copy of any and all test results and final reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Executive Director, Tenant shall furnish to the Executive Director a copy or copies of any and all other Environmental Inquiries relating to or affecting the Property including, but not limited to, all environmental permit applications for permits, test results and final environmental reports, including, without limitation, those reports and other matters which may be characterized as confidential. For the avoidance of ambiguity only, Tenant shall be under no obligation to furnish any attorney-client privileged documents; provided, however, that Tenant may not withhold from Landlord facts regarding a violation of law that affects the Property.

ARTICLE 16. ASSIGNMENT.

Because of the importance that Landlord places on Tenant’s qualification, expertise and identity, and the reliance Landlord makes upon Tenant’s ability to construct

and operate the Project, during the Term, Tenant shall not assign or attempt to assign this Ground Lease or any right herein, except to such transferees as approved or permitted pursuant to Section 15 of the Regulatory Agreement. Notwithstanding the foregoing, Tenant may sublease the units to low, very low, and extremely low income households as provided in the Agreement and the Regulatory Agreement.

ARTICLE 17. MORTGAGES.

17.1 Ground Leasehold Mortgages. Notwithstanding anything to the contrary contained elsewhere herein, at all times during the Term, Tenant shall have the right to mortgage, pledge, deed in trust, assign rents, issues, and profits and/or collaterally (or absolutely for purposes of security if required by any lender) assign its interest in this Ground Lease, or otherwise encumber this Ground Lease, and/or the interest of Tenant hereunder, in whole or in part, and any interests or rights appurtenant to this Ground Lease, and to assign or pledge the same as security for any debt (the holder of any such mortgage, pledge, or other encumbrance, and the beneficiary of any such deed of trust being hereafter referred to as “Mortgagee” and the mortgage, pledge, deed of trust, or other instrument hereafter referred to as “Mortgage”), upon and subject to each and all of the terms and conditions listed in Paragraphs (a), (b), and (c) below. As used in this Ground Lease, the term “Mortgage” includes the HACSM Loan, and the term “Mortgagee” includes Landlord, as the beneficiary under the HACSM Note:

(a) Prior to the issuance of a Release of Construction Covenants by Landlord, Mortgages entered into by Tenant shall be limited in purpose to and the principal amount of all such Mortgages shall not exceed the amount necessary and appropriate to develop the Improvements, and to acquire and install equipment and fixtures thereon. Said amount shall include all hard and soft costs of acquisition, development, construction, lease-up, and operation of the Improvements.

(b) After the recordation of the Release of Construction Covenants by Landlord, the principal amount of all Mortgages entered into by Tenant shall be limited to an amount that does not exceed the value of Tenant’s leasehold interest in the Property, as supported by an appraisal reasonably acceptable to the Executive Director; provided, that such requirement shall not result in a default with respect to any Mortgage entered into by Tenant prior to recordation of the Release of Construction Covenants, nor shall such requirement prohibit Tenant from refinancing any Mortgage entered into by Tenant prior to recordation of the Release of Construction Covenants as

long as the principal amount of such refinancing does not exceed the then-outstanding balance owed by Tenant on the refinanced Mortgage entered into by Tenant prior to recordation of the Release of Construction Covenants and Tenant does not receive a payment of net proceeds from the refinancing. Tenant shall compensate Landlord for Landlord's actual and reasonable costs to verify the value of Tenant's leasehold interest in the Property and review and approve any Mortgage and related loan documents that require Landlord's approval, including in-house payroll and administrative costs and out-of-pocket costs paid by Landlord to consultants and attorneys.

(c) Any permitted Mortgages entered into by Tenant are to be originated only by Institutional Lenders or other governmental agencies approved in writing by Landlord, which approval will not be unreasonably conditioned, delayed, or withheld. Landlord shall state the reasons for any such disapproval in writing.

(d) All rights acquired by said Mortgagee shall be subject to each and all of the covenants, conditions and restrictions set forth in this Ground Lease and the Regulatory Agreement, and to all rights of Landlord thereunder, none of which covenants, conditions, and restrictions is or shall be waived by Landlord by reason of the giving of such Mortgage.

If Tenant encumbers its leasehold estate by way of a Mortgage as permitted herein, and should Landlord be advised in writing of the name and address of the Mortgagee, then this Ground Lease shall not be terminated or canceled on account of any Event of Default by Tenant in the performance of the terms, covenants or conditions hereof until Landlord shall have complied with the provisions of this Ground Lease as to the Mortgagee's rights to cure. In addition, after the creation of any Mortgage permitted by this Ground Lease, no agreement by Landlord and Tenant to cancel, surrender, terminate, amend, or modify this Ground Lease shall be effective without the written consent of each Mortgagee and the Investor; provided that this sentence is not intended to prohibit Landlord from exercising its rights and remedies for a Tenant default as provided herein.

17.2 Landlord's Forbearance and Right to Cure Defaults on Ground Leasehold Mortgages. Landlord will give to any Mortgagee, at such address as is specified by the Mortgagee in accordance with Section 23.1 hereof, a copy of each notice or other communication with respect to any claim that a default exists or is about to exist from Landlord to Tenant hereunder at the time of giving such notice or communication to

Tenant, and Landlord will give to the Mortgagee a copy of each notice of any rejection of this Ground Lease by any trustee in bankruptcy of Tenant; provided, however, that a failure by Landlord to provide any such notice to Mortgagee shall not excuse a default by Tenant or extend Tenant's time to perform its obligations hereunder or effectuate a cure of said default. Each such notice to a Mortgagee shall be given by U.S. certified mail, postage prepaid, return receipt requested, and shall be effective upon receipt.

17.3 Landlord Cooperation. Landlord covenants and agrees that it will act and fully cooperate with Tenant in connection with Tenant's right to grant leasehold mortgages as hereinabove provided. At the request of Tenant or any proposed or existing Mortgagee, Landlord shall promptly execute and deliver (i) any documents or instruments reasonably requested to evidence, and/or acknowledge the rights of the Mortgagees as herein provided; and (ii) an estoppel certificate certifying the status of this Ground Lease and Tenant's interest herein and such matters relating thereto as are reasonably requested by Tenant or such Mortgagees. Such estoppel certificate shall include, but not be limited to, certification by Landlord that (a) this Ground Lease is unmodified and in full force and effect (or, if modified, a statement as to the nature of such modification and certification that this Ground Lease, as so modified, is in full force and effect, if applicable), (b) all rents currently due under the Ground Lease have been paid (or, if unpaid, the period and amount of any arrearages, penalties, interest and other charges), (c) there are not, to Landlord's knowledge, any uncured Events of Default on the part of Tenant under the Ground Lease or facts, acts or omissions which, with the giving of notice or passing of time, or both, would constitute an Event of Default (or, if there is a default, the nature and scope of the default). Any such estoppel certificate may be conclusively relied upon by any proposed or existing leasehold Mortgagee or assignee of Tenant's interest in this Ground Lease. As a condition to Landlord's obligation to execute and deliver any such document, instrument, or estoppel certificate, Tenant or the proposed or existing Mortgagee requesting the same shall be responsible to pay all of Landlord's actual and reasonable costs, including in-house payroll and administrative costs and out-of-pocket costs for third party consultants and attorneys, to investigate and respond to such request.

17.4 No Subordination of Landlord's Interest. Landlord's fee interest in the Property shall be senior to, and not be subordinated to, any financing obtained by Tenant in connection with the Property.

17.5 Priority. This Ground Lease, and any extensions, renewals or replacements thereof, and any sublease entered into by Tenant as sublessor, and any

Mortgage or other encumbrance now or hereafter recorded by any Mortgagee shall be superior to any future mortgages, deeds of trust or similar encumbrances placed by Landlord on the Property and to any lien right, if any, of Landlord on the buildings, and any furniture, fixtures, equipment or other personal property of Tenant upon the Property or any interest of Landlord in sublease rentals or similar agreements.

17.6 Claims. Landlord and Tenant shall deliver to each Mortgagee written notice of any litigation or arbitration proceedings between the parties or involving the Property or this Ground Lease. Any Mortgagee shall have the right, at its option and its expense, to intervene and become a party to any such proceedings. If a Mortgagee elects not to intervene or become a party, Landlord shall deliver to said Mortgagee prompt written notice of and a written copy of any award, decision or settlement agreement made in connection with any such proceeding.

17.7 Further Amendments. Landlord and Tenant shall reasonably consider including in this Ground Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Mortgagee for the purpose of implementing the mortgagee protection provisions contained in this Ground Lease and allowing the Mortgagee reasonable means to protect or preserve the lien of its Mortgage upon the occurrence of a default under the terms of this Ground Lease. Landlord and Tenant each agree to execute and deliver (and to acknowledge for recording purposes, if necessary) any agreement reasonably required to effect any such amendment.

17.8 Loan Obligations. Nothing contained in this Ground Lease shall relieve Tenant of its obligations and responsibilities under any Mortgage loans and Mortgage loan documents to operate the Project as set forth therein.

17.9 Liens and Encumbrances Against Tenant's Interest in the Leasehold Estate

(a) Tenant (and Foreclosure Transferee) shall have the right to encumber the leasehold estate created by this Ground Lease and the Improvements with one or more deeds of trust or mortgages in conformance with the requirements of Section 17.1 hereof.

(b) Tenant shall not have the right to encumber Landlord's fee interest in the Property or Landlord's reversionary interest in the Improvements.

(c) For as long as there is any lien securing any permitted Mortgage loan:

(1) Each permitted Mortgagee which has an outstanding Mortgage loan secured by Tenant's leasehold interest in the Property shall have the right, but not the obligation, at any time to pay any or all of the Rent due pursuant to the terms of this Ground Lease, and do any other act or thing required of Tenant by the terms of this Ground Lease, to prevent termination of this Ground Lease. Each Mortgagee and its agents and contractors shall have a right to enter the Property for purposes of accomplishing the foregoing, so long as such Mortgagee indemnifies and holds Landlord harmless from any and all liability arising from such entry upon the Property. Each Mortgagee shall have sixty (60) days after receipt of written notice from Landlord describing a default by Tenant to cure any default in the payment of Rent (including any monetary obligation of Tenant hereunder) and any other default the cure of which does not require physical possession of the Property before this Lease shall be deemed terminated as to Mortgagee, and any payments so made and all things so done by or on behalf of a permitted Mortgagee shall be as effective to prevent a termination of this Ground Lease as the same would have been if made and performed by Tenant instead of by Mortgagee(s). If Tenant's default is such that possession of the Property is reasonably necessary to remedy the default, each permitted Mortgagee which has an outstanding Mortgage loan shall have such additional time after the expiration of such sixty (60) day period as such Mortgagee may reasonably require to remedy such default, provided that (i) such Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease within such sixty (60) day period and shall continue to pay currently such monetary obligations when the same are due, and (ii) within one hundred twenty (120) days after receipt of Landlord's notice of default, such Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings, shall be diligently prosecuting the same, and, after such Mortgagee acquires Tenant's leasehold estate hereunder such Mortgagee performs all of Tenant's obligations under this Ground Lease and the Regulatory Agreement and promptly completes cure of Tenant's default.

(2) If a Mortgagee is prohibited, stayed, or enjoined by any bankruptcy, insolvency, or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified in subparagraph (1) above for commencing or prosecuting such foreclosure or other

proceedings and completing a cure that requires possession of the Property shall be extended for the period of such stay prohibition or injunction; provided that any Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease and shall continue to pay currently such monetary obligations when the same fall due (subject to the notice and cure provision contained herein).

(3) Landlord shall deliver, by U.S. certified mail, postage prepaid, return receipt requested, to each permitted Mortgagee which has any outstanding Mortgage loan a duplicate copy of all notices which Landlord may from time to time give to Tenant pursuant to this Ground Lease.

(4) If this Ground Lease is terminated, whether by foreclosure, order of a bankruptcy court, or otherwise, upon written request by any permitted Mortgagee given within sixty (60) days after Landlord gives written notice of such termination to each permitted Mortgagee, Landlord shall enter into a new lease of the Property with the permitted Mortgagee for the remainder of the Term with the same agreements, covenants, reversionary interests, and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as are contained in this Ground Lease and the Regulatory Agreement and with priority equal to this Ground Lease and Regulatory Agreement, which new lease shall be effective as of the date of termination of the original Ground Lease; provided, however, that a requesting Mortgagee shall promptly cure any defaults by Tenant reasonably susceptible to cure by the Mortgagee. Tenant under the new lease shall have the same right, title, and interest in and to all Improvements located on the Property as Tenant had under the terminated Ground Lease immediately prior to its termination. Landlord shall by quitclaim deed or by the terms of the new lease convey to the permitted Mortgagee, title to the improvements, if any, which become vested in Landlord as a result of the termination of the Ground Lease. The permitted Mortgagee shall be responsible for all costs reasonably incurred by Landlord in connection with the preparation and execution of such new lease.

(5) The Investor of Tenant shall have the same rights to receive notices of default and to cure as any permitted Mortgagee authorized under this paragraph (c).

(6) No Mortgagee shall be required to perform any act which is not susceptible to performance by a Mortgagee, such as to cure a filing or condition of bankruptcy or insolvency.

(d) Any Mortgage created pursuant to subsection (a) of this Section shall be subject to the provisions of this Ground Lease and all rights of Landlord under this Ground Lease.

(e) On transfer of this Ground Lease at any foreclosure sale, or upon creation of a new Ground Lease, any or all of the following Events of Default relating to the prior owner of the Ground Lease shall be deemed cured:

(1) Attachment, execution, or other judicial levy upon the Ground Lease;

(2) Assignment of the Ground Lease for the direct or indirect benefit of creditors of the prior Tenant;

(3) Judicial appointment of a receiver or similar officer to take possession of the Ground Lease;

(4) Filing a petition by, for, or against Tenant under any chapter of the federal Bankruptcy Act or any federal or state debtor relief statute, as amended; and

(5) Any other defaults personal to Tenant and/or not otherwise reasonably curable by Mortgagee.

(f) A Foreclosure Transferee shall succeed to all interest of Tenant in any security or other deposits or other impound payments paid by Tenant to Landlord, except to the extent such security or other deposit or impound payment is used by Landlord to cure an Event of Default of Tenant hereunder.

(g) Foreclosure of any Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power of sale contained in such Mortgage, or any conveyance of the leasehold estate under this Ground Lease from Tenant to a Foreclosure Transferee in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision or a default under this Ground Lease. Landlord shall recognize the Foreclosure

Transferee as Tenant under this Ground Lease following any such transfer, subject to the obligations of the Foreclosure Transferee to comply with this Ground Lease.

17.10 Cost of Loans to be Paid by Tenant. Tenant affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Mortgage loans, (ii) the delivery of any instruments and documents and their filing and recording, if required, (iii) all taxes and charges payable in connection with the Mortgage loans, and (iv) all costs reasonably incurred by Landlord in making any amendments of this Lease requested by Tenant or Mortgagees.

17.11 No Merger. There shall be no merger, without the consent of the permitted Mortgagee under any Mortgage, of the leasehold estate and the fee estate in the Property merely because both estates are acquired or become vested in the same person or entity.

17.12 Transfer Rights. Foreclosure of any permitted Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or an affiliate of Mortgagee or entity controlled by Mortgagee, through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Ground Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as Tenant hereunder. Any further assignments shall require the approval of Landlord, which shall not unreasonably be withheld, conditioned, or delayed.

ARTICLE 18. SUBLEASING.

18.1 Subleasing of Property. All subleases made by Tenant to residents of the individual residential units in the Project (“**Resident Leases**”) shall be in compliance with the applicable (if any) regulations of the California Tax Credit Allocation Committee, the applicable (if any) requirements of the Tax Credit Regulatory Agreement, and the applicable (if any) requirements of the Bond Regulatory Agreement, and shall be subject to the following provisions and restrictions:

18.1.1 Each Resident Lease (or addendum thereto) shall contain a provision, satisfactory to Landlord, requiring the sublessee to attorn to Landlord upon (a) an Event of Default by Tenant under this Ground Lease, and (b) receipt by such sublessee

of written notice of such Event of Default and instructions to make such sublessee's rental payments to Landlord.

18.1.2 On any termination of this Ground Lease prior to the expiration of the Term, all of Tenant's interest as sublessor under any and all existing valid and enforceable Resident Leases for which Landlord has issued a non-disturbance agreement shall be deemed automatically assigned, transferred, and conveyed to Landlord and subtenants under such Resident Leases shall be deemed to have attorned to Landlord. Landlord shall thereafter be bound on such Resident Leases to the same extent Tenant, as sublessor, was bound thereunder and Landlord shall have all the rights under such Resident Leases that Tenant, as sublessor, had under such Resident Leases; provided, however, that any amendments to any such Resident Lease made after the issuance of a non-disturbance agreement to a subtenant shall not be binding on Landlord.

18.1.3 Each Resident Lease (or addendum thereto) shall expressly provide that it is subject to each and all of the covenants, conditions, restrictions, and provisions of this Ground Lease.

18.2 Rights of Mortgagees. Notwithstanding anything contained in this Ground Lease to the contrary, all attornment provisions applicable to Landlord shall also be applicable to a permitted Mortgagee and, as between Landlord and the permitted Mortgagee, the permitted Mortgagee shall have priority in any attornment situation.

ARTICLE 19. PERFORMANCE OF TENANT'S COVENANTS.

19.1 Right of Performance. If Tenant shall at any time fail to pay any Imposition or other charge in accordance with Article 4 hereof, within the time period therein permitted, or shall fail to pay for or maintain any of the insurance policies provided for in Article 9 hereof, within the time therein permitted, or to make any other payment or perform any other act on its part to be made or performed hereunder, within the time permitted by this Ground Lease, then Landlord, after ten (10) days' written notice to Tenant (or, in case of an emergency, on such notice, or without notice, as may be reasonable under the circumstances) and without waiving or releasing Tenant from any obligation of Tenant hereunder, may (but shall not be required to):

(a) pay such Imposition or other charge payable by Tenant pursuant to the provisions of Article 4 hereof, or

(b) pay for and maintain such insurance policies provided for in Article 9 hereof, or

(c) make such other payment or perform such other act on Tenant's part to be made or performed as in this Ground Lease provided.

19.1.2 Rights of Mortgagees. Notwithstanding anything in this Ground Lease to the contrary, all of the performance rights available to Landlord under Section 19.1 shall also be available to any Mortgagee.

19.2 Reimbursement and Damages. All sums paid by Landlord pursuant to Section 19.1 and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the rate provided in Section 4.6 from the respective dates of Landlord's making of each such payment or incurring of each such cost or expense, shall constitute additional Rent payable by Tenant under this Ground Lease and shall be paid by Tenant to Landlord on demand. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent required to be insured against pursuant to the terms of this Ground Lease of any deficiency in the insurance required by the provisions of this Ground Lease), damages, costs and expenses of suit, including reasonable attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Improvements, occurring during any period in which Tenant shall have failed or neglected to provide insurance as aforesaid.

ARTICLE 20. EVENTS OF DEFAULT; REMEDIES.

20.1 Events of Default. Any one or all of the following events shall, subject to Section 22.1, constitute an Event of Default hereunder:

20.1.1 If Tenant shall default in the payment of any Rent when and as the same becomes due and payable and such default shall continue for more than ten (10) days after Landlord shall have given written notice thereof to Tenant; or

20.1.2 If Tenant shall materially default under this Ground Lease or under the Regulatory Agreement, and such default is not timely cured within the time provided

for herein or therein; or

20.1.3 The abandonment or vacation of the Property by Tenant for a period of thirty (30) days after prior written notice thereof by Landlord; or

20.1.4 The entry of any decree or order for relief by any court with respect to Tenant, or any assignee or transferee of Tenant (hereinafter "**Assignee**"), in any involuntary case under the Federal Bankruptcy Code or any other applicable federal or state law; or the appointment of or taking possession by any receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any Assignee (unless such appointment is in connection with a permitted Mortgagee's exercise of its remedies under its Mortgage), or of any substantial part of the property of Tenant or such Assignee, or the ordering or winding up or liquidating of the affairs of Tenant or any Assignee and the continuance of such decree or order unstayed and in effect for a period of ninety (90) days or more (whether or not consecutive); or the commencement by Tenant or any such Assignee of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal law or consent by Tenant or any such Assignee to the entry of any order for relief in an involuntary case under any such law, or consent by Tenant or any such Assignee to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, sequestrator, or other similar official of Tenant or any such Assignee, or of any substantial property of any of the foregoing, or the making by Tenant or any such Assignee of any general assignment for the benefit of creditors; or Tenant or any such Assignee takes any other voluntary action related to the business of Tenant or any such Assignee or the winding up of the affairs of any of the foregoing.

20.2 Remedies.

20.2.1 If an Event of Default shall occur and continue as aforesaid, then in addition to any other remedies available to Landlord at law or in equity, but subject to Article 17, Landlord shall have the immediate option to terminate this Ground Lease and bring suit against Tenant and recover as an award in such suit or arbitration proceeding the following:

(a) the worth at the time of award of the unpaid rent and all other sums due hereunder which had been earned at the time of termination;

(b) the worth at the time of award of the amount by which the unpaid rent and all other sums due hereunder which would have been earned after

termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) the worth at the time of award of the amount by which the unpaid rent and all other sums due hereunder for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Ground Lease and/or any of the Transaction Documents, as applicable, or which in the ordinary course of things could be likely to result therefrom; and

(e) such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

20.2.2 The "worth at the time of the award" of the amounts referred to in Subparagraphs 20.2.1(a) and 20.2.1(b) above shall be computed by allowing interest at the rate provided in Section 4.6 as of the date of the award. The "worth at the time of award" of the amount referred to in subparagraph 20.2.1(c) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

20.3 Receipt of Rent, No Waiver of Default. No failure by Landlord to insist upon the strict performance of any term hereof or to exercise any right, power, or remedy consequent upon a default under this Ground Lease, and no acceptance of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. Not by way of limitation of the foregoing, the receipt by Landlord of the rents or any other charges due to Landlord, with knowledge of any breach of this Ground Lease by Tenant or of any default on the part of Tenant in the observance or performance of any of the conditions or covenants of this Ground Lease, shall not be deemed to be a waiver of any provisions of this Ground Lease. No acceptance by Landlord of a lesser sum than the rents or any other charges then due shall be deemed to be other than on account of the earliest installment of the rents or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent or charges due be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance

of such installment or pursue any other remedy provided in this Ground Lease. The receipt by Landlord of any rent or any other sum of money or any other consideration paid by Tenant after the termination of this Ground Lease, or after giving by Landlord of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Ground Lease, reinstate, continue, or extend the term of this Ground Lease, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by Landlord to Tenant prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Property or the Improvements, excepting only an agreement in writing signed by Landlord accepting or agreeing to accept such a surrender.

20.4 Effect on Indemnification. Notwithstanding the foregoing, nothing contained in this Article 20 shall be construed to limit Landlord's, the County's and/or SAMCHAI's right to indemnification as otherwise provided in this Ground Lease.

20.5 Remedies Cumulative. The various rights, options, elections, and remedies of Landlord and Tenant, respectively, contained in this Ground Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority, or remedy allowed or provided for by law and not expressly waived in this Ground Lease.

ARTICLE 21. PERMITTED CONTESTS.

Tenant, at no cost or expense to Landlord, may contest (after prior written notice to Landlord), by appropriate legal proceedings conducted with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien, provided that (a) in the case of liens of mechanics, materialmen, suppliers or vendors, or Impositions or liens therefor, such proceedings shall suspend the collection thereof from Landlord, and shall suspend a foreclosure against the Property and/or the Improvements, or any interest therein, or any Rent, if any, (b) neither the Property or the Improvements, nor any part thereof or interest therein, or the Rent, if any, or any portion thereof, would be in any danger of being sold, forfeited, or lost by reason of such proceedings, and (c) Tenant shall have furnished to Landlord, if requested, a bond or other security, satisfactory to Landlord. If Tenant shall fail to contest any such matters, or to give Landlord security as hereinabove provided, Landlord may, but shall not be obligated to, contest the matter or settle or

compromise the same without inquiring into the validity or the reasonableness thereof. Landlord, at the sole cost and expense of Tenant, will cooperate with Tenant and execute any documents or pleadings legally required for any such contest.

ARTICLE 22. FORCE MAJEURE.

22.1 Delay of Performance. Subject to Section 22.2 below, Tenant's performance of its obligations set forth in Article 7, Sections 11.2.4 and 11.4, Article 14, and Article 15 to timely make any required improvements, additions, changes, repairs, and replacements to the Property shall be excused during the period of time that Tenant, after and despite its exercise of commercially reasonable diligence to perform such work, is prohibited, prevented, or delayed from proceeding with the work due to any of the following causes: any regulation, order, act, restriction, or requirement or limitation imposed by any federal, state, municipal, or foreign government or any department or agency thereof, or civil or military authority; acts of God; acts or omissions of Landlord or its agents or employees; fire, explosion, or floods (subject to Tenant's obligations herein to promptly repair and restore the damage caused thereby); strikes, walkouts, or inability to obtain materials; war, terrorism, riots, sabotage or civil insurrection; or any other causes without the fault and beyond the reasonable control of Tenant. In no event shall adverse economic or market conditions, Tenant's inability to obtain financing, increases in interest rates, or similar causes justify an extension of Tenant's obligation to timely perform any of such obligations.

22.2 Notice and Cure Requirements. No prevention, delay, or stoppage of performance shall be excused unless:

(a) Tenant notifies Landlord within thirty (30) days of such prevention, delay, or stoppage that it is claiming excuse of its obligations under this Article 22; and

(b) Tenant diligently proceeds within thirty (30) days of the conclusion of such prevention, delay, or stoppage to cure the condition causing the prevention, delay or stoppage; and

(c) Tenant effects such cure within a reasonable time.

ARTICLE 23. GENERAL PROVISIONS.

23.1 Notices. Written notices, demands and communications between Landlord and Tenant (herein “**Notices**”) shall be sufficiently given if (i) delivered by hand, (ii) delivered by reputable same-day or overnight messenger service that provides a receipt showing date and time of delivery, or (iii) dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of Landlord and Tenant at the addresses specified in this Section 23.1. Such Notices may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 23.1.

Any Notice shall be deemed received immediately if delivered by hand or delivered by messenger in accordance with the preceding paragraph, and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by registered or certified mail in accordance with the preceding paragraph.

If to Tenant: MP Midway Associates I, L.P.
c/o MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: Jan Lindenthal
Telephone No.: 650-356-2919

with a copy to: Gubb & Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan Gross, Esq.
Telephone No.: 415-781-6600 ext. 6

If Landlord: to Housing Authority of the County of San Mateo
264 Harbor Blvd., Building A
Belmont, CA 94002-4017
Attn: Executive Director
Reference: Midway/Bayshore Redevelopment Project
Telephone No.: 650-802-5024

ATTACHMENT NO. 12

with a copy Monali Sheth, Esq.
to San Mateo County Counsel's Office
400 County Center, 6th Floor
Redwood City, CA 94063
Telephone No.: 650- 363-4697

and to Rutan & Tucker, LLP
611 Anton, Suite 1400
Costa Mesa, CA 92626
Phone No.: 714-641-5100
Attention: Allison LeMoine-Bui, Esq.

Addresses for Notice may be changed from time to time by delivery of a Notice to all other parties in compliance herewith. Notwithstanding that Notices shall be deemed given when delivered, the non-receipt of any Notice as the result of a change of address of which the sending party was not notified shall be deemed receipt of such Notice.

23.2 Certificates. Landlord or Tenant, as the case may be, shall execute, acknowledge, and deliver to the other, promptly upon request by Landlord, Tenant, a Mortgagee or Investor, an estoppel certificate of Landlord or Tenant, as the case may be, certifying (a) that this Ground Lease is unmodified and in full force and effect (or, if there have been modifications, that the Ground Lease is in full force and effect, as modified, and stating the date of each instrument so modifying the Ground Lease), (b) the date, if any, through which the Rent, if any, has been paid, (c) whether there are then existing any offsets or defenses against the enforcement of any term hereof on the part of Tenant to be performed or complied with (and, if so, specifying the same), and (d) whether any default exists hereunder and, if any such default exists, specifying the nature and period of existence thereof and what action Landlord or Tenant, as the case may be, is taking or proposes to take with respect thereto and whether notice thereof has been given to the party in default. Any Certificate may be relied upon by any prospective purchaser, transferee, mortgagee, or trustee under a deed of trust or leasehold estate in the Property or any part thereof or of Landlord's or Tenant's interest under this Ground Lease. Tenant will also deliver to Landlord, promptly upon request, such information with respect to the Property or any part thereof as from time to time may reasonably be requested. Tenant or the existing or prospective Mortgagee requesting an estoppel certificate from Landlord shall, as a condition to receipt of such estoppel certificate, pay Landlord for Landlord's

actual and reasonable costs incurred to investigate and respond to the same, including Landlord's in-house payroll and administrative costs and the amounts paid by Landlord to consultants and attorneys.

23.3 No Merger of Title. There shall be no merger of this Ground Lease or the leasehold estate created by this Ground Lease with any other estate in the Property or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly:(a) this Ground Lease or the leasehold estate created by this Ground Lease or any interest in this Ground Lease or in any such leasehold estate, and (b) any other estate in the Property and the Improvements or any part thereof or any interest in such estate, and no such merger shall occur unless and until all persons, corporations, firms and other entities, including any leasehold Mortgagee or leasehold Mortgagees, having any interest (including a security interest) in (i) this Ground Lease or the leasehold estate created by this Ground Lease, and (ii) any other estate in the Property or the Improvements or any part thereof shall join in a written instrument effecting such merger and shall duly record the same.

23.4 Quiet Enjoyment. Tenant, upon paying the Rent, if any, and other charges herein provided for and upon performing and complying with all covenants, agreements, terms and conditions of this Ground Lease to be performed or complied with by it, shall lawfully and quietly hold, occupy and enjoy the Property during the Term of this Ground Lease without hindrance or molestation by Landlord, or any person or persons claiming through Landlord.

23.5 No Claims Against Landlord. Nothing contained in this Ground Lease shall constitute any consent or request by Landlord, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, nor as giving Tenant any right, power, or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord or its interest in the Property in respect thereof.

23.6 Non-Liability of Landlord or County Officials and Employees. No member, director, officer, employee, or volunteer of Landlord or County shall be personally liable to Tenant, including any successor in interest of Landlord or County, in the event of any Default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease.

Tenant hereby waives and releases any claim it may have against the members, directors, officials, employees, or volunteers of Landlord with respect to any Default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Tenant's Initials

23.7 Inspection. Landlord and its authorized representatives may enter the Property or any part thereof at all reasonable times for the purpose of inspecting, servicing, or posting notices, protecting the Property or the Improvements, or for any other lawful purposes; provided, that except in cases of emergency Landlord shall provide Tenant prior telephonic or other notice of Landlord's intent to enter onto the Property, Landlord's entries shall occur only during normal business hours (8 AM-6 PM Monday-Friday), and Landlord may only enter an occupied residential unit after giving the sublessee three (3) days prior written notice and either obtaining the consent of the occupant(s) or obtaining an inspection warrant, if required by law.

23.8 Holding Over. In the event Tenant shall hold over or remain in possession of the Property or the Improvements with the consent of Landlord after the expiration of the Term, such holding over or continued possession shall create a tenancy for month-to-month only, upon the same terms and conditions as are herein set forth so far as the same are applicable.

23.9 Relationship Between Landlord and Tenant. It is hereby acknowledged by Tenant that the relationship between Landlord and Tenant is not that of a partnership or joint venture and that Landlord and Tenant shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, with the exception of any provisions expressly set forth to the contrary herein, in the Agreement, or in the Attachments hereto,

Landlord shall have no rights, powers, duties, or obligations with respect to the development, operation, maintenance, or management of the Project. Tenant agrees to indemnify, defend, and hold harmless Landlord from and against any and all claims, liabilities, and losses arising from a claimed relationship of partnership, joint venture, or agency between Landlord and Developer with respect to the development, operation, maintenance or management of the Property or the Project, except to the extent occasioned by the active negligence or willful misconduct of Landlord or its designated agents or employees.

23.10 Landlord's Continuing Interest and Rights of Enforcement. Landlord is deemed the beneficiary of the terms and provisions of Articles 7-12, Sections 13.2-13.3, and Articles 15, 16, and 18 of this Ground Lease for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Ground Lease has been executed and is being performed, without regard to whether Landlord has been, remains, or is an owner of any land or interest therein in the Property, or in the Project. Landlord shall have the right, if any of said provisions of this Ground Lease or any of the covenants set forth therein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of said provisions of this Ground Lease may be entitled.

23.11 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

23.12 Venue for Legal Actions. All legal actions by either party to enforce this Agreement or seeking any remedy arising out of or related to this Agreement must be instituted and maintained in the Superior Court of the County of San Mateo, State of California, or in the United States District Court for the Northern District of California.

23.13 Service of Process. In the event that any legal action is commenced by Tenant against Landlord, service of process on Landlord shall be made by personal service upon the Executive Director or in such other manner as may be provided by law. In the event that any legal action is commenced by Landlord against Tenant, service of process on Tenant shall be made by personal service upon the general partner of Tenant

or in such other manner as may be provided by law. Service shall be effective regardless of whether it is made within the State of California.

23.14 Attorney's Fees. In the event of a dispute between the parties arising out of or in connection with this Ground Lease, whether or not such dispute results in arbitration or litigation, the prevailing party (whether resulting from settlement before or after arbitration or litigation is commenced) shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including expert witness fees, incurred by the prevailing party.

23.15 Time Is of The Essence. Time is of the essence of this Ground Lease and all of the terms, provisions, covenants, and conditions hereof.

23.16 Survival of Representations, Warranties and Covenants. The respective representations, warranties, and covenants contained herein shall survive the Commencement Date and continue throughout the Term.

23.17 Construction of Agreement. This Ground Lease shall be construed in accordance with the internal laws of the State of California, without regard to the choice of law rules thereof. The rule of construction that a document be construed strictly against its drafter shall have no application to this Ground Lease. Titles and captions are for convenience of reference only and do not define, describe, or limit the scope or the intent of this Ground Lease or of any of its terms. Reference to section numbers are to sections in this Ground Lease unless expressly stated otherwise.

23.18 Severability. If one or more of the provisions of this Ground Lease shall be held to be illegal or otherwise void or invalid, the remainder of this Ground Lease shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted under applicable laws and regulations.

23.19 Entire Agreement; Modification. This Ground Lease and the Agreement referred to in Recital D collectively contain the entire agreement of the parties with respect to the matters discussed herein and supersede all prior discussions and negotiations between the parties with respect thereto. This Ground Lease may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extensions, or discharge is sought.

23.20 Binding Effect and Benefits. This Ground Lease shall inure to the benefit

of and be binding on the parties hereto and their respective successors and assigns. Except as otherwise set forth herein, nothing in this Ground Lease, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Ground Lease.

23.21 No Third Party Rights. Except as may be expressly set forth herein, the parties intend that no rights nor remedies be granted to any third party as a beneficiary of this Ground Lease or of any covenant, duty, obligation, or undertaking established herein..

23.22 Real Estate Brokerage Commissions. Landlord and Tenant each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part.

23.23 Computation of Time. The time in which any act is to be done under this Ground Lease is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

23.24 Counterparts. This Ground Lease may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Ground Lease.

23.25 Number and Gender. Whenever the singular number is used in this Ground Lease and required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

23.26 Conflicts. To the extent conflicting provisions exist in this Ground Lease and the Agreement, the provisions of this Ground Lease shall control over any conflicting provision in the Agreement.

23.27 Incorporation by Reference. Every Exhibit attached to this Ground Lease and referred to herein is hereby incorporated by reference.

23.28 Consent Rights. Unless otherwise expressly provided in this Ground Lease, all approvals or consents of Landlord (or Executive Director), Tenant, or any Mortgagee shall not be unreasonably withheld, conditioned, or delayed.

23.29 Legal Advice. Each party represents and warrants to the other party the following: such party has carefully read this Ground Lease and in signing this Ground Lease it does so with full knowledge of any right which it may have; it has received independent legal advice from its respective legal counsel as to the matters set forth in this Ground Lease, or it has knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease and it has freely signed this Ground Lease without any reliance upon any agreement, promise, statement, or representation by or on behalf of the other party, or its respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

[end – signatures on next page]

IN WITNESS WHEREOF, the undersigned have executed this Ground Lease as of the date first above written.

“Landlord”

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO, a public body, corporate and politic

Date: _____, 20__

By: _____
Raymond Hodges, Executive Director

“Tenant”

MP Midway Associates I, L.P., a California limited partnership

By: MP Midway I, LLC,
a California limited liability company,
Its: General partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit
corporation,
Its: Sole member/manager

Date: _____, 20__

By: _____
Jan M. Lindenthal, Assistant Secretary

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT "B"

MEMORANDUM OF LEASE

(See following document)

ATTACHMENT NO. 12

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of San Mateo Department
of Housing
264 Harbor Blvd., Building A
Belmont, CA 94002-4017
Attn: Barbara Deffenderfer

Exempt From Recording Fee Pursuant to
Government Code Sections 6103 and 27383

MEMORANDUM OF UNRECORDED GROUND LEASE

This **MEMORANDUM OF UNRECORDED GROUND LEASE** (“**Memorandum**”) is hereby entered into as of _____ by and between **HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO**, a public body, corporate and politic (“**Landlord**”), and **MP MIDWAY ASSOCIATES I, L.P.**, a California limited partnership (“**Tenant**”).

RECITALS

A. Landlord and Tenant have entered into a “Ground Lease” dated concurrently herewith for that certain real property owned by Landlord (the “**Property**”), which provides for the construction, maintenance, management and operation of a _____ (___) unit affordable multifamily apartment project, to be made available long term at an affordable housing cost (the “**Project**”). The Property is legally described in Exhibit “A,” which is attached hereto and incorporated herein by this reference. A copy of the Ground Lease is available for public inspection at the office of the Landlord, 264 Harbor Blvd., Building A, Belmont, CA 94002-4017.

B. The term of the Ground Lease commences on the date of recordation of this Memorandum of Unrecorded Ground Lease in the Official Records of San Mateo County (the “**Commencement Date**”) and, subject to the provisions set forth in the Ground Lease and applicable law that may result in an earlier termination of the Ground Lease, continues until the ninety-ninth (99th) anniversary of the Commencement Date.

C. The Ground Lease provides that a short form memorandum of the Ground

Lease shall be executed and recorded in the Official Records of San Mateo County, California.

NOW, THEREFORE, the parties hereto certify as follows:

Landlord, pursuant to the Ground Lease, hereby leases the Property to Tenant upon the terms and conditions provided for therein. This Memorandum of Lease is not a complete summary of the Ground Lease, and shall not be used to interpret the provisions of the Ground Lease.

“Landlord”

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO, a public body, corporate and politic

Date: _____, 20__

By: _____
Raymond Hodges, Executive Director

“Tenant”

MP Midway Associates I, L.P., a California limited partnership

By: MP Midway I, LLC,
a California limited liability company,
Its: General partner

By: Mid-Peninsula Half Moon Bay, Inc.,
a California nonprofit public benefit
corporation,
Its: Sole member/manager

Date: _____, 20__

By: _____
Jan M. Lindenthal, Assistant Secretary

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who 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.

Signature _____

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who 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.

Signature _____

(Seal)

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

ATTACHMENT NO. 13

HACSM REGULATORY AGREEMENT

[See following document]

REQUESTED BY
AND WHEN RECORDED MAIL TO:

Housing Authority of the County of San
Mateo
264 Harbor Blvd., Building A
Belmont, CA 94002-4017
Attention: _____

This document is exempt from a recording fee pursuant to
Government Code Sections 6103 and 27383.

AFFORDABLE HOUSING REGULATORY AGREEMENT

This **AFFORDABLE HOUSING REGULATORY AGREEMENT** (this “**Regulatory Agreement**”), dated for purposes of identification only as of _____ (the “**Date of Regulatory Agreement**”), is entered by and between the **HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO**, a public body, corporate and politic, (the “**HACSM**”), and **MP MIDWAY ASSOCIATES I, L.P.**, a California limited partnership (the “**Developer**”). HACSM and Developer are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

The following recitals are a substantive part of this Regulatory Agreement; all capitalized terms set forth in the Recitals shall have the meanings ascribed to such terms in Section 1 hereof.

- A. HACSM is a California entity, organized and existing under California Health and Safety Code section 34200, et seq., authorized to engage, or assist, in the ownership, development, and operation of affordable housing, with its offices in the County of San Mateo.
- B. HACSM owns fee title to that certain real property located in the City of Daly City, County of San Mateo, State of California more particularly described in Exhibit “A”, which is attached hereto and incorporated herein by this reference (the “**Property**”).

ATTACHMENT NO. 13

- C. Developer is controlled by an experienced owner, developer and manager of affordable housing for low and moderate-income families.
- D. HACSM entered into an Affordable Housing and Property Disposition Agreement with Developer, dated as of _____ (“**Agreement**”).
- E. The Agreement provides for HACSM to ground lease the Property to Developer, and for Developer to construct and operate a one hundred forty-seven (147) unit multifamily apartment project with all but two of such units restricted for occupancy by low, very low, and extremely low income households (the “**Project**”). The Agreement further provides that the Parties execute and record this Regulatory Agreement against the Property, to ensure that the Property shall be operated continuously, for a period a ninety-nine (99) years, as an affordable rental apartment complex in accordance with the terms hereof.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS.

“**30% AMI Extremely Low Income Household**” means those person(s) or households whose income does not exceed thirty percent (30%) of AMI.

“**30% AMI Extremely Low Income Unit**” means the fifteen (15) Affordable Units that are required to be rented to and occupied by 30% AMI Extremely Low Income Households, all of which units shall be studio units.

“**50% AMI Very Low Income Household**” means those person(s) or households whose income does not exceed fifty percent (50%) of AMI.

“**50% AMI Very Low Income Unit**” means the sixty-four (64) Affordable Units that are required to be rented to and occupied by 50% AMI Very Low Income Households, with the following unit mix:

- five (5) studio
- sixteen (16) one (1) bedroom; one (1) bathroom
- thirty-two (32) two (2) bedroom; one (1) bathroom
- five (5) three (3) bedrooms; two (2) bathroom
- six (6) four (4) bedroom; two (2) bathroom

“60% AMI Low Income Household” means those person(s) or households whose income does not exceed sixty percent (60%) of AMI.

“60% AMI Low Income Unit” means the twelve (12) Affordable Units that are required to be rented to and occupied by 60% AMI Low Income Households, with the following unit mix:

nine (9) studio
two (2) one (1) bedroom; one (1) bathroom
one (1) four (4) bedroom; two (2) bathroom

“80% AMI Low Income Household” means those person(s) or households whose income does not exceed eighty percent (80%) of AMI.

“80% AMI Low Income Unit” means the fifty-four (54) Affordable Units that are required to be rented to and occupied by 80% AMI Low Income Households, with the following unit mix:

six (6) one (1) bedroom; one (1) bathroom
twenty-two (22) two (2) bedroom; one (1) bathroom
twenty-five (25) three (3) bedroom; two (2) bathroom
one (1) four (4) bedroom; two (2) bathroom

“Additional Regulatory Agreements” means the Tax Credit Regulatory Agreement, the Bond Regulatory Agreement, and any other regulatory agreement Developer is required to execute as a condition to obtaining financing to develop and/or operate the Project.

“Affiliate” means any “Person,” directly or indirectly, “Controlling” or “Controlled” by or under common “Control” with such Person, whether by direct or indirect ownership of equity interests, by contract or otherwise, where “**Person**” means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind, “**Control**” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract or otherwise, and “**Controlling**” and “**Controlled**” means exercising or having Control.

“Affordability Period” means the period commencing on the date on which this

Regulatory Agreement is recorded in the Official Records and ending on the ninety-ninth (99th) anniversary of said date.

“Affordable Units” means the following one hundred forty-five (145) rental units in the Project:

- (i) twenty-nine (29) studio units;
- (ii) twenty-four (24), one (1) bedroom, one (1) bath units;
- (iii) fifty-four (54), two (2) bedroom, one (1) bath units;
- (iv) thirty (30), three (3) bedroom, two (2) bath units; and
- (v) eight (8), four (4) bedroom, two (2) bath units.

“Affordable Rent” means the maximum Monthly Rent that may be charged to and paid by 30% AMI Extremely Low Income Households, 50% AMI Very Low Income Households, 60% AMI Low Income Households, and 80% AMI Low Income Households, as applicable, for the Affordable Units, as annually determined pursuant to TCAC.

“Agreement” is defined in Recital D hereof.

“AHAP Contract” means an Agreement to Enter into Housing Assistance Payments Contract entered into by and between Developer and the County of San Mateo.

“AMI” means the median family income (adjusted for household size) for the San Mateo County Area promulgated and published annually by HCD pursuant to Title 25, Section 6932 of the California Code of Regulations. If HCD ceases to annually publish median incomes, the Parties shall agree upon an adequate substituted manner for determining AMI.

“Annual Project Revenue” means all gross income and all revenues of any kind from the Property in a calendar year, of whatever form or nature, whether direct or indirect, with the exception of the items excluded below, actually received by or paid to or for the account or benefit of Developer or any of their agents or employees, from any and all sources, resulting from or attributable to the ownership, operation, leasing and occupancy of the Property, determined on the basis of generally accepted accounting principles applied on a consistent basis, and shall include, but not be limited to: (i) gross rentals paid by tenants of the Property under leases, and payments and subsidies of whatever nature, including without limitation any payments, vouchers or subsidies from the U.S. Department of Housing and Urban Development or any other person or organization,

received on behalf of tenants under their leases, (ii) amounts paid by residents of the Property to Developer or any Affiliate of Developer on account of Operating Expenses for further disbursement by Developer or such Affiliate to a third party or parties, (iii) late charges and interest paid on rentals, (iv) rents and receipts from licenses, concessions, vending machines, coin laundry and similar sources, (v) other fees, charges or payments not denominated as rental but payable to Developer in connection with the rental of office, retail, storage, or other space in the Property, (vi) consideration received in whole or in part for the cancellation, modification, extension or renewal of leases, and (vii) interest and other investment earnings on security deposits, reserve accounts and other Property accounts to the extent disbursed for other than the purpose of the reserve. Notwithstanding the foregoing, gross income shall not include the following items: (a) security deposits from tenants (except when applied by Developer to rent or other amounts owing by tenants); (b) capital contributions to Developer by its members, partners or shareholders (including capital contributions required to pay any Deferred Developer Fee); (c) condemnation or insurance proceeds; (d) funds received from any source actually and directly used for initial development of the Project; (e) receipt by an Affiliate of management fees or other bona fide arms-length payments for reasonable and necessary Operating Expenses associated with the Property; (f) Transfer Net Proceeds; or (g) Refinancing Net Proceeds.

“Approved Financing” means the financing approved by HACSM pursuant to the Agreement, as set forth in the Final Project Budget approved pursuant to the process described in Section 6.4 of the Agreement, obtained by Developer for the acquisition of a leasehold interest in the Property and the construction/development and ownership of the Project. In addition, “Approved Financing” shall include any refinancing of the Approved Financing which has been approved by HACSM.

“Approved Pro Forma” means that certain pro forma created in connection with the Final Project Budget approved pursuant to the process described in Section 6.4 of the Agreement.

“Bond Regulatory Agreement” means the regulatory agreement with the Institutional Lender responsible for placing the Tax-Exempt Bonds (applicable only if the Project is financed by issuance of Tax-Exempt Bonds).

“Capital Replacement Reserve” means a capital replacement reserve for the Project (i) initially consisting of not less than _____ Dollars (\$_____)

(or such greater amount required under any Additional Regulatory Agreement, under the Partnership Agreement, or by any lender of a Project-related loan that has been approved by HACSM) set aside in a separate interest-bearing trust account, commencing upon the rental of the Affordable Units, and (ii) replenished from annual deposits of _____ Dollars (\$____) per Unit (e.g., \$_____) of Annual Project Revenue, adjusted annually by the CPI Adjustment (unless otherwise agreed to by Developer and HACSM) or as required under the Partnership Agreement (or such greater amount required under any Additional Regulatory Agreement, or under the Partnership Agreement).

“Certification of Continuing Program Compliance” means an annual recertification form substantially in the form attached hereto and incorporated herein as Exhibit E.

“Certificate of Occupancy” means the final certificate of occupancy issued by the City for the completion of construction of the Project.

“City” means the City of Daly City, a California municipal corporation.

“Construction Financing” means the proceeds of Tax-Exempt Bonds issued to finance the Project through the construction period (e.g., until a “conversion date”), in the amount of _____ Dollars (\$_____).

“County” means the County of San Mateo.

“CPI Adjustment” means the percentage increase in the cost of living index, as measured by the Consumer Price Index for all urban consumers, San Francisco-Oakland-Hayward statistical area, all items (1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (“CPI”) between the CPI figure in effect as of the date on which the Certificate of Occupancy is issued and the CPI figure in effect as of the date on which an adjustment is made. If such index is discontinued or revised, such other index with which such index is replaced (or if not replaced, another index which reasonably reflects and monitors consumer prices) shall be used in order to obtain substantially the same results as would have been obtained if the discontinued index had not been discontinued or revised. If the CPI is changed so that the base year is other than 1982-84, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

“Date of Regulatory Agreement” is defined in the initial paragraph hereof.

“Default” means the failure of a Party to perform any action or covenant required by the Agreement or hereunder within the time periods provided in the Agreement or hereunder, respectively, following notice and opportunity to cure, as set forth in Section 13.1 of the Agreement and Section 16.01 hereof, respectively.

“Developer” means MP Midway Associates I, L.P., a California limited partnership, and any permitted assignees of Developer.

“DTSC” means the State Department of Toxic Substances Control.

“Eligible Tenant” means, with respect to a 30% AMI Extremely Low Income Unit, a 30% AMI Extremely Low Income Household; with respect to a 50% AMI Very Low Income Unit, a 50% AMI Very Low Income Household; with respect to a 60% AMI Low Income Unit, a 60% AMI Low Income Household; and with respect to an 80% AMI Low Income Unit, an 80% AMI Low Income Household.

“Environmental Laws” means (i) Sections 25115, 25117, 25122.7 or 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) Article 9 or Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (vi) Section 311 of the Clean Water Act (33 U.S.C. §1317), (vii) Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903) or (viii) Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*

“Executive Director” means the person duly appointed to the position of Executive Director of HACSM, or his or her designee. The Executive Director shall represent HACSM in all matters pertaining to this Regulatory Agreement. Whenever a reference is made herein to an action or approval to be undertaken by HACSM, the Executive Director is authorized to act unless this Regulatory Agreement specifically provides otherwise or the context should otherwise require.

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County, DTSC, the City, and any other political subdivision, agency, instrumentality, or other entity exercising jurisdiction over HACSM, Developer, the Project, or the Property, including common law.

“Ground Lease” means that certain Ground Lease entered into by and between HACSM and Developer concurrently herewith.

“HACSM” means the Housing Authority of the County of San Mateo, a public body, corporate and politic, and any assignee of or successor to its rights, powers and responsibilities.

“HACSM and County and HACSM and County Personnel” means HACSM, the County, SAMCHAI and all of their respective officers, officials, directors, members, employees, agents, and representatives.

“HACSM Deed of Trust” means that certain deed of trust executed by Developer, as “Trustor,” in favor of HACSM, as “Beneficiary,” securing Developer’s repayment under the HACSM Note.

“HACSM Loan” means the loan provided by HACSM to Developer pursuant to the Agreement to assist the Developer with the costs Developer incurs in developing the Project.

“HACSM Note” means that certain HACSM Promissory Note executed by Developer on or about the same date hereof, that evidences Developer’s obligation to repay the HACSM Loan.

“HAP Contract” means a Housing Assistance Payments contract entered into by and between Developer and the County of San Mateo.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste”, “acutely hazardous waste”, “extremely hazardous waste”, or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under

Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material”, “hazardous substance”, or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., (xii) methyl-tertiary butyl ether, (xiii) perchlorate, or (xiv) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment. For purposes hereof, “Hazardous Materials” excludes materials and substances in quantities as are commonly used in constructing and operating apartment complexes, provided such materials and substances are used in accordance with all applicable laws.

“Hazardous Materials Contamination” means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time emanating from the Property.

“HCD” means the California Department of Housing and Community Development.

“HUD” means the United States Department of Housing and Urban Development.

“Institutional Lender” means any of the following institutions having assets or deposits in the aggregate of not less than One Hundred Million Dollars (\$100,000,000): a

California chartered bank; a bank created and operated under and pursuant to the laws of the United States of America; an “incorporated admitted insurer” (as that term is used in Section 1100.1 of the California Insurance Code); a “foreign (other state) bank” (as that term is defined in Section 1700(1) of the California Financial Code); a federal savings and loan association (Cal. Fin. Code Section 8600); a commercial finance lender (within the meaning of Sections 2600 et seq. of the California Financial Code); a “foreign (other nation) bank” provided it is licensed to maintain an office in California, is licensed or otherwise authorized by another state to maintain an agency or branch office in that state, or maintains a federal agency or federal branch in any state (Section 1716 of the California Financial Code); a bank holding company or a subsidiary of a bank holding company which is not a bank (Section 3707 of the California Financial Code); a trust company, savings and loan association, insurance company, investment banker; college or university; pension or retirement fund or system, either governmental or private, or any pension or retirement fund or system of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any state thereof; and a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended, provided such trust is listed on either the American Stock Exchange or the New York Stock Exchange. Each of _____ and _____ are hereby deemed to be an Institutional Lender.

“**Investor**” has the meaning ascribed thereto in Section 15.01 hereof.

“**Legal Description**” means that certain legal description of the Property which is attached hereto and incorporated herein as Exhibit A.

“**Map**” means a map depicting the Property which is attached hereto and incorporated herein as Exhibit B.

“**Marketing Plan**” means a marketing plan for the rental of the Affordable Units which provides, to the extent authorized by applicable federal, state and local laws and regulations, for the preferences described in Section 4.07 below. The Marketing Plan is further discussed in Section 4.03 hereof.

“**MidPen**” means MidPen Housing Corporation, a California nonprofit, public benefit corporation.

“**Monthly Rent**” means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately

charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone or cable service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. In the event that all utility charges are paid by the landlord rather than the tenant, no utility allowance shall be deducted from the rent.

“Notice” means a notice in the form prescribed by Section 17.01 hereof.

“Official Records” means the Official Records of the County of San Mateo, California.

“Operating Budget” means an operating budget for the Project, which budget shall be subject to the annual written approval of HACSM in accordance with Section 9.01 hereof.

“Operating Expenses” means actual, reasonable and customary (for comparable high quality rental developments in San Mateo County) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Project in a calendar year, which are in accordance with the annual Operating Budget approved by HACSM pursuant to Section 9 hereof, including, without limitation, painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of property management, fees and expenses of accountants, attorneys and other professionals, and other actual, reasonable and customary operating costs which are directly incurred and paid by Developer, but which are not paid from or eligible to be paid from the Operating Reserve or any other reserve accounts. In addition, Operating Expenses shall include a social services fee in the amount of _____ Dollars (\$_____) for calendar year 20__, which shall be increased annually by three and five-tenths percent (3.5%) per year, provided Developer provides the social services described in (a) Developer’s tax credit application or any other application for funding obtained by Developer for development and/or operation of the Project, (b) the Resident Services Plan, and (c) the Scope of

Development attached to the Agreement (which Scope of Development shall survive any termination of the Agreement). Operating Expenses shall not include any of the following: (i) salaries of employees of Developer or Developer's general overhead expenses, or expenses, costs and fees paid to an Affiliate of Developer, to the extent any of the foregoing exceed the expenses, costs or fees that would be payable in a bona fide arms' length transaction between unrelated parties in the San Mateo County area for the same work or services; (ii) any amounts paid directly by a tenant of the Project to a third party in connection with expenses which, if incurred by Developer, would be Operating Expenses; (iii) optional or elective payments with respect to the Construction Financing; (iv) any payments with respect to any Project-related loan or financing that has not been approved by HACSM; (v) expenses, expenditures, and charges of any nature whatsoever arising or incurred by Developer prior to completion of the Project with respect to the development of the Project, or any portion thereof, including, without limitation, all predevelopment and preconstruction activities conducted by Developer in connection with the Project, including without limitation, the preparation of all plans and the performance of any tests, studies, investigations or other work, and the construction of the Project and any on site or off site work in connection therewith; or (vi) depreciation, amortization, and accrued principal and interest expense on deferred payment debt.

“Operating Reserve” means an operating reserve for the Project (i) initially consisting of not less than _____ Dollars (\$_____) (or such greater amount required under any Additional Regulatory Agreement, under the Partnership Agreement, or by any lender of a Project-related loan that has been approved by HACSM) set aside in a separate interest-bearing trust account, commencing upon the rental of the Affordable Units, and (ii) replenished to _____ Dollars (\$_____) from annual deposits of the Annual Project Revenue, to the extent available, such that the balance of the Operating Reserve consists of not less than three (3) months of projected Operating Expenses, adjusted annually by the CPI Adjustment (unless otherwise agreed to by Developer and HACSM) or as required under the Partnership Agreement (or such greater amount required under any Additional Regulatory Agreement, or under the Partnership Agreement), provided in no event shall the balance in such account exceed a sum equal to one (1) year of debt service for the Project (or such greater amount required under any Additional Regulatory Agreement, pursuant to any of the Approved Financing or under the Partnership Agreement). Developer's requirement to maintain the Operating Reserve shall terminate at such time as the Project has achieved a minimum annual debt service ratio of 1.15 for three (3) years following

the date Developer has initially rented ninety-five percent (95%) of the Affordable Units to Eligible Tenants in accordance with the terms of this Regulatory Agreement.

“Outside Construction Commencement Date” means that date which is thirty (30) days after the Property Closing Date.

“Partnership Agreement” means the agreement which sets forth the terms of Developer’s limited partnership, as such agreement may be amended from time to time.

“Permanent Financing” means a loan in an amount not to exceed the amount of the Construction Financing from an Institutional Lender to be secured by a leasehold deed of trust against the Property which replaces the Construction Financing upon Developer’s completion of the construction of the Project.

“Project” means an affordable rental Project consisting of one hundred forty-seven (147) residential dwelling units (including two (2) manager units) and all required on-site improvements necessary to serve the Project.

“Property” means that certain real property (i) consisting of approximately three and seventy-seven hundredths (3.77) acres, (ii) located in the City of Daly City, (iii) depicted on the Map, and (iv) described in the Legal Description.

“Property Closing” means generally, the closing for the Approved Financing, and particularly, the time and day that this Regulatory Agreement and the Memorandum of Ground Lease are filed for record with the San Mateo County Recorder.

“Property Closing Date” means the date on which the Property Closing occurs.

“RAP” means that certain Remedial Action Plan for the Property approved by DTSC in August 1993, pursuant to which, from approximately 1993 to 2002, certain remediation activities were carried out within areas of the Property. The RAP s available for public inspection at the office of HACSM, at 264 Harbor Blvd., Building A, Belmont, CA 94002-4017.

“RAP Amendment” means that certain amendment to the RAP approved by DTSC on _____, 2020, which requires additional soil gas testing and, if required, installation of a vapor mitigation system and post-construction monitoring, all as required by DTSC. The RAP Amendment is available for public inspection at the office of HACSM, at 264 Harbor Blvd., Building A, Belmont, CA 94002-4017.

“Regulatory Agreement” means this Regulatory Agreement.

“Release of Construction Covenants” means the document which evidences Developer’s satisfactory completion of construction of the Project, as set forth in Section 10.15 of the Agreement, substantially in the form which is attached thereto as Attachment No. 14 and incorporated therein by reference.

“Scope of Development” means that certain Scope of Development which is attached to the Agreement as Attachment No. 7 and incorporated therein by reference. The Scope of Development describes the scope, amount and quality of the construction to be done by Developer pursuant to the terms and conditions of the Agreement and this Regulatory Agreement.

“Tax Credits” means Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*

“Tax Credit Regulatory Agreement” means the regulatory agreement which may be required to be recorded against the Property with respect to the issuance of Tax Credits for the Project.

“Tax Credit Rules” means Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*, and the rules and regulations implementing the foregoing, as the same may be amended from time to time.

“Tax-Exempt Bonds” means tax-exempt multi-family housing revenue bonds.

“TCAC” means the California Tax Credit Allocation Committee.

SECTION 2. COVENANTS REGARDING CONSTRUCTION OF THE IMPROVEMENTS.

Developer shall carry out the design, construction, and operation of the Project in compliance with applicable Governmental Requirements and all of the terms and conditions set forth in the Agreement.

SECTION 3. COVENANTS REGARDING USE.

3.01 Covenants To Use In Accordance With Ground Lease And Agreement. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to Developer's interest in the Property or any part thereof, that Developer shall devote the Property to the uses specified in the Ground Lease and this Regulatory Agreement until the termination of Developer's right to occupy the Property under the Ground Lease. The foregoing covenants shall run with the land.

3.02 Covenant Regarding Specific Uses. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to Developer's interest in the Property or any part thereof, that Developer shall use the Property to operate the Project until the expiration of the Affordability Period.

3.03 Covenants Regarding Term And Priority Of Agreement. This Regulatory Agreement shall remain in effect throughout the Affordability Period, notwithstanding the payment in full of the HACSM Loan. Developer's performance under this Regulatory Agreement is secured by the HACSM Deed of Trust, and Developer shall not be entitled to a reconveyance of the HACSM Deed of Trust prior to the expiration of the Affordability Period; provided that, upon Developer's repayment of the HACSM Loan, Developer shall be entitled to a partial reconveyance of the HACSM Deed of Trust solely to release therefrom Developer's obligations to repay the HACSM Loan. This Regulatory Agreement shall unconditionally be and remain at all times prior and superior to the liens created by the Construction Financing, the Permanent Financing, the Tax Credit Regulatory Agreement, Bond Regulatory Agreement, any other Additional Regulatory Agreement, and any other documents related to any of the foregoing and all of the terms and conditions contained therein, and to the lien of any new mortgage debt which is for the purpose of refinancing all or any part of the Construction Financing or Permanent Financing. Notwithstanding the foregoing, however, if the Investor reasonably determines prior to the Property Closing that based on the Project's residual analysis test, maximum rent levels would need to be increased after the fifty-fifth (55th) year of operation, then the Executive Director shall have the right, in his or her sole and absolute discretion, to revise the form of HACSM Regulatory Agreement to permit such increases after the fifty-fifth (55th) year of operation, but only to the extent necessary to satisfy the Investor's residual analysis test.

SECTION 4. COVENANTS REGARDING AFFORDABLE UNITS.

Developer shall provide for the Affordable Units in accordance with this Section.

4.01 Residential Use. Without HACSM's prior written consent, which consent may be given or withheld in HACSM's sole and absolute discretion, none of the Affordable Units in the Project will at any time be utilized on a transient basis or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park, nor shall the Affordable Units be used as a place of business except as may otherwise be allowed by applicable law.

4.02 Provision of Affordable Units. Developer shall make available, restrict occupancy to, and rent the Affordable Units to Eligible Tenants at Affordable Rents throughout the Affordability Period.

4.03 Selection of Tenants.

(a) Developer shall be responsible for the selection of tenants for the Affordable Units in compliance with all lawful and reasonable criteria, as set forth in the Marketing Plan. Developer shall not refuse to lease to (i) a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria, or (ii) an applicant who would be qualified to be a tenant in accordance with the approved tenant selection criteria but for a poor credit rating resulting from a foreclosure of a mortgage on a single family home previously owned by the applicant.

(b) The initial lease-up of the Affordable Units shall be done pursuant to a lottery system. The Marketing Plan shall include procedures for conducting the lottery. A representative of HACSM may, but shall not be obligated to, attend the lottery. Notwithstanding anything in this Agreement to the contrary, none of Developer or MidPen, and their respective officials, directors, and employees, and the immediate family members of their respective officials, directors, and employees shall be eligible to participate in the lottery for the initial lease-up of the Affordable Units. As used herein, the term "immediate family member" shall mean and include a parent or step-parent, grandparent or step-grandparent, sibling or step-sibling and child or step-child.

(c) Following the initial lease-up of the Affordable Units, Developer shall maintain a waiting list of persons interested in renting an Affordable Unit. Subject to Sections 4.5 and 4.7 below, at such time as an Affordable Unit becomes available for rental, Developer shall rent such Affordable Unit to the first person on the waiting list that qualifies as an Eligible Tenant to rent the Affordable Unit. Developer shall use commercially reasonable efforts to lease Affordable Units that become available as quickly as possible.

4.04 Occupancy By Eligible Tenant. An Affordable Unit occupied by an Eligible Tenant who qualified as an Eligible Tenant at the commencement of the occupancy shall be treated as occupied by an Eligible Tenant until a recertification of such Eligible Tenant's income in accordance with Section 4.08 below demonstrates that such tenant no longer qualifies as an Eligible Tenant at the applicable income level. An Affordable Unit previously occupied by an Eligible Tenant and then vacated shall be considered occupied by an Eligible Tenant until the Affordable Unit is reoccupied, provided Developer uses its best efforts to re-lease the vacant Affordable Unit to an Eligible Tenant. Any vacated Affordable Unit shall be held vacant until re-leased to an Eligible Tenant. Developer shall take any or all of the following actions, as necessary, to locate Eligible Tenants for the Project: (i) notification to the HACSM of the available Affordable Unit; (ii) advertisement of the available Affordable Unit in a newspaper of general circulation in San Mateo County, and (iii) outreach and marketing activities typically used by MidPen or limited partnerships in which MidPen is the managing general partner to fill unoccupied or vacated units, including available units, if any, for which a specified target population will receive a preference.

4.05 Occupancy Restrictions. The maximum number of occupants that may reside in an Affordable Unit shall be as follows: three (3) persons in a one (1) bedroom Affordable Unit; five (5) persons in a two (2) bedroom Affordable Unit; seven (7) persons in a three (3) bedroom Affordable Unit; and nine (9) persons in a four (4) bedroom Affordable Unit; provided, however, that with respect to the PBV Units, the maximum occupancy standards shall be as set forth in applicable regulations. Developer shall comply with all applicable minimum occupancy restrictions promulgated by HUD, TCAC, and/or any other applicable funding source.

4.06 Income Computation and Certification. Immediately prior to an Eligible Tenant's occupancy of an Affordable Unit, Developer shall obtain an Income Computation and Certification Form in the form attached hereto and incorporated herein as Exhibit "C",

or on a similar form required by any Additional Regulatory Agreement if such form requires inclusion of the same information as required in Exhibit "C", from each such Eligible Tenant dated no more than one hundred twenty (120) days prior to the date of initial occupancy in the Project by such Eligible Tenant. In addition, Developer shall provide such further information as may be reasonably required in the future by HACSM for purposes of verifying a tenant's status as an Eligible Tenant. Developer shall use good faith efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from the applicant's current employer; (iii) obtain an income verification form from the Social Security Administration, California Department of Social Services, and/or California Employment Development Department if the applicant receives assistance from any of said agencies; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other evidence and/or verification of such applicant's total income received during the calendar year from any source, taxable or nontaxable, or such other information as is satisfactory to HACSM. Developer shall maintain in its records each Income Computation and Certification Form obtained pursuant to this section for a minimum of five (5) years.

4.07 Rental Priority; Preferences. Subject to all applicable Governmental Requirements, and any funding obtained by Developer to operate and/or develop the Project that has been approved by HACSM, during the term of this Regulatory Agreement, Developer shall use its reasonable commercial efforts to lease the Affordable Units to Eligible Tenants in the following order of priority: (a) Eligible Tenants who have been or will be displaced by the redevelopment of Midway Village, or (b) Eligible Tenants who live and/or work in the County. In addition, Developer shall provide the following preferences:

(a) Twelve (12) Affordable Units will have a preference for youth transitioning out of the County foster care system, to be referred by County Human Services Agency.

(b) _____

4.08 Recertification. Within one hundred twenty (120) days prior to the first anniversary date of the occupancy of an Affordable Unit by an Eligible Tenant, and on each anniversary date thereafter, Developer shall recertify the income of such Eligible

Tenant by obtaining a completed Income Recertification Form, in the form attached hereto and incorporated herein as Exhibit "D", based upon the current income of each known occupant of the Affordable Unit; provided, however, that if any Additional Regulatory Agreement requires Developer to obtain a recertification form which requires inclusion of the same information as required in Exhibit "D", then Developer shall not be deemed to be in default hereunder if during the term of such Additional Regulatory Agreement Developer obtains from each Eligible Tenant the recertification form required pursuant to said Additional Regulatory Agreement.

If, after renting an Affordable Unit, the household income increases above the income level permitted for the Affordable Unit, but meets the income level permitted for other Affordable Units at the Project, the household shall continue to be permitted to reside in such Affordable Unit provided that Developer shall increase the rent for that Affordable Unit to the rent level designated for an Affordable Unit at the income level of the household, and shall restrict and designate the next available Affordable Unit with the same number of bedrooms as the redesignated Affordable Unit and that is not already designated at the original income level of the redesignated Affordable Unit as an Affordable Unit at the original income level of the redesignated Affordable Unit.

If, after renting an Affordable Unit, the household income increases above the income level permitted for an 80% AMI Low Income Unit, but does not exceed one hundred twenty percent (120%) of AMI, the household shall continue to be permitted to reside in such Affordable Unit provided that Developer shall increase the rent for that Affordable Unit to thirty percent (30%) of the gross household income.

If, after renting an Affordable Unit, the household income increases above one hundred twenty percent (120%) of AMI, the household may not be permitted to remain in the Affordable Unit unless requiring such household to move will violate the Tax Credit Rules. In such event, Developer shall notify HACSM in writing of such occurrence, and shall inform HACSM of (1) its proposed actions; or (2) the specific rule in the Tax Credit Rules that prohibits such action providing written evidence of the same.

4.09 Certification of Continuing Program Compliance. During the term of this Regulatory Agreement, on or before each _____ 1 following the date HACSM issues a Release of Construction Covenants for the Project, Developer shall annually advise HACSM of the occupancy of the Project during the preceding calendar year by delivering a Certification of Continuing Program Compliance in the form attached hereto

and incorporated herein as Exhibit "E", stating (i) the Affordable Units of the Project which have been rented to and are occupied by Eligible Tenants and (ii) that to the knowledge of Developer either (a) no unremedied default has occurred under this Regulatory Agreement, or (b) a default has occurred, in which event said certification shall describe the nature of the default and set forth the measures being taken by Developer to remedy such default.

4.10 Leases; Rental Agreements for Affordable Units. Developer shall enter into a written lease, the form of which shall comply with the requirements of this Regulatory Agreement, with each tenant/tenant household of the Affordable Units.

4.11 Reliance on Tenant Representations. Each tenant lease shall contain a provision to the effect that Developer has relied on the income certification and supporting information supplied by the tenant in determining qualification for occupancy of the Affordable Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

4.12 Monitoring and Record Keeping. Representatives of HACSM shall be entitled to enter the Property during normal business hours, upon not less than twenty-four (24) hours' notice, to monitor compliance with this Regulatory Agreement, to inspect the records of the Property, and to conduct an independent audit or inspection of such records. Developer agrees to cooperate with HACSM in making the Property and all Affordable Units thereon available for such inspection or audit. Developer agrees to maintain records in a businesslike manner, and to maintain copies of original tenant certifications for fifteen (15) years (or such longer period as required under the Tax Credit Rules) and all other records pertaining to the Project for five (5) years.

4.13 Remedy For Violation of Rental Requirements.

(d) It shall constitute a default for Developer to charge or accept for any Affordable Unit rent amounts in excess of the amount provided for in Section 4.02 of this Regulatory Agreement. In the event that Developer charges or receives such higher rental amounts, Developer shall be required to reimburse the tenant that occupied said Affordable Unit at the time the excess rent was received for the entire amount of such excess rent received, provided that such tenant can be found following reasonable inquiry, and to pay to such tenant interest on said excess amount, at the rate of six percent (6%) per annum, for the period commencing on the date the first excess rent was received from said tenant and ending on the date reimbursement is made to the tenant. For

purposes of this Section 4.13, “reasonable inquiry” shall include Developer’s review of information provided by the tenant as part of the tenant’s application, and forwarding information provided by the tenant, and Developer’s reasonable attempts to contact the tenant and any other persons listed in either of such documents. If, after such reasonable inquiry, Developer is unable to locate the tenant, Developer shall pay all of such amounts otherwise to be paid to the tenant to HACSM.

(e) Except as otherwise provided in this Regulatory Agreement, it shall constitute a default for Developer to knowingly (or without investigation as required herein) initially rent any Affordable Unit to a tenant who is not an Eligible Tenant. In the event Developer violates this Section, in addition to any other equitable remedy HACSM shall have for such default, Developer, for each separate violation, shall be required to pay to HACSM an amount equal to (i) the greater of (A) the total rent Developer received from such ineligible tenant, or (B) the total rent Developer was entitled to receive for renting that Affordable Unit, plus (ii) any relocation expenses incurred by HACSM or the County as a result of Developer having rented to such ineligible person. The terms of this Section shall not apply if Developer rents to an ineligible person as a result of such person’s fraud or misrepresentation.

(f) It shall constitute a default for Developer to knowingly (or without investigation as required herein) rent an Affordable Unit in violation of the leasing preference requirements of Section 4.07 of this Regulatory Agreement. In the event Developer violates this Section, in addition to any other equitable remedy HACSM shall have for such default, Developer, for each separate violation, shall be required to pay HACSM an amount equal to (i) the greater of (A) the total rent Developer received from such ineligible tenant, or (B) the total rent Developer was entitled to receive for renting that Affordable Unit.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH IN THIS SECTION 4.13 (THE “DAMAGE AMOUNTS”) CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT HACSM WOULD SUFFER DUE TO THE DEFAULTS BY DEVELOPER SET FORTH IN THIS SECTION 4.13, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF REGULATORY AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO HACSM AND ACCOMPLISHMENT OF HACSM’S PURPOSE OF ASSISTING IN THE PROVISION OF AFFORDABLE HOUSING TO ELIGIBLE TENANTS THAT REASONABLY COULD BE ANTICIPATED AND THE

ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE AMOUNTS SET FORTH IN THIS SECTION 4.13 SHALL BE THE SOLE MONETARY DAMAGES REMEDY FOR THE DEFAULTS SET FORTH IN THIS SECTION 4.13, BUT NOTHING IN THIS SECTION 4.13 SHALL BE INTERPRETED TO LIMIT HACSM'S REMEDY FOR SUCH DEFAULT TO SUCH A DAMAGES REMEDY AND IN THAT REGARD HACSM MAY DECLARE A DEFAULT UNDER THE TERMS OF THE HACSM NOTE, THE GROUND LEASE, THE AGREEMENT, OR OTHER AGREEMENTS ENTERED INTO BY AND BETWEEN HACSM AND DEVELOPER. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS REGULATORY AGREEMENT.

DEVELOPER'S INITIALS:

HACSM'S INITIALS:

4.14 Relationship to Additional Regulatory Agreements. Notwithstanding any other provisions set forth in this Regulatory Agreement and subject to the following sentence, to the extent that the provisions related to tenant selection, tenant income levels and unit rent levels set forth in any Additional Regulatory Agreement are less restrictive than those provisions set forth in this Section 4, then the provisions set forth in this Section 4 shall govern and control. To the extent of any inconsistency between this Regulatory Agreement and any Additional Regulatory Agreement regarding Affordable Rent for the Affordable Units, the more restrictive agreement or covenants shall prevail unless compliance with such more restrictive provisions would violate the provisions of the less restrictive document.

Developer agrees to perform all of Developer's obligations under this Regulatory Agreement, and under each of the Additional Regulatory Agreements. In the event HACSM is prevented by a final, non-appealable order of a court of competent jurisdiction in a lawsuit involving the Project, or by an applicable and binding published appellate opinion, or by a final, non-appealable order of a regulatory body having jurisdiction, from enforcing, for any reason, the affordability restrictions set forth in this Regulatory Agreement or in the Agreement, then in such event, unless prohibited by TCAC, HACSM shall be a third-party beneficiary under the Additional Regulatory Agreements, and shall

have full authority to enforce any breach or default by Developer thereunder in the same manner as though it were a breach or default hereunder.

4.15 AHAP Contract; HAP Contract; PBV Units. Developer shall use commercially reasonable efforts to secure and enter into an AHAP Contract and HAP Contract, and to continually renew such contracts throughout the term of this Regulatory Agreement. Notwithstanding anything to the contrary in this Regulatory Agreement, during the term of any HAP Contract for the Property, the units subject to project-based-voucher assistance pursuant to the HAP Contract (the “**PBV Units**”) shall be subject to the tenant selection and rental requirements and restrictions set forth in the HAP Contract, and to the extent that with respect to the PBV Units there is a conflict between the terms of this Regulatory Agreement and the terms of the HAP Contract, then with respect to the PBV Units the terms of the HAP Contract shall control. For the avoidance of doubt, the PBV Units shall not be subject to the tenant selection and priority requirements set forth in Sections 4.03 and 4.07 of this Regulatory Agreement. Any effective AHAP Contract and HAP Contract shall constitute an Additional Regulatory Agreement.

SECTION 5. COVENANT TO PAY TAXES AND ASSESSMENTS.

Developer shall pay prior to delinquency all ad valorem real estate taxes, special taxes, assessments and special assessments levied against the Property, subject to Developer’s right to contest any such tax in good faith and any property tax exemption.

SECTION 6. COVENANTS REGARDING MAINTENANCE.

Developer shall maintain the Property and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with all applicable laws and regulations, including, without limitation, HUD’s Housing Quality Standards. Developer shall maintain the improvements and landscaping on the Property in accordance with the “Maintenance Standards,” as hereinafter defined. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Property and any and all other improvements on the Property. To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Regulatory Agreement.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards (the “**Maintenance Standards**”):

(a) The Property shall be maintained in good condition and in accordance with the custom and practice generally applicable to comparable high quality, well-managed apartment complexes, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curblin.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths, and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris, or other matter which is unsafe or unsightly; removal of all trash, litter, and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves, and other debris are properly disposed of by maintenance workers.

Upon HACSM’s written notification to Developer of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency, or such longer period as is reasonably necessary to complete the cure, provided Developer commences the correction, remedy, or cure within such thirty (30) day period and diligently pursues such correction, remedy, or cure to completion.

SECTION 7. COVENANTS REGARDING MANAGEMENT.

Developer shall provide for the management of the Project in accordance with this Section.

7.01 Property Manager. Developer shall manage or cause the Project, and all appurtenances thereto that are a part of the Project, to be managed in a prudent and

business-like manner, consistent with property management standards for other comparable high quality, well-managed rental housing projects and commercial developments in San Mateo County, California. Developer may contract with a property management company or property manager to operate and maintain the Project in accordance with the terms of this Section (“**Property Manager**”); provided, however, the selection and hiring of the Property Manager (and each successor or assignee) is and shall be subject to prior written approval of HACSM. Developer shall conduct due diligence and background evaluation of any potential outside property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a property manager. Any proposed property manager shall have prior experience with projects and properties comparable to the Project and the references and credit record of such manager/company shall be investigated (or caused to be investigated) by Developer prior to submitting the name and qualifications of such proposed property manager to HACSM for review and approval. A complete and true copy of the results of such background evaluation shall be provided to HACSM. Approval of a Property Manager by HACSM shall not be unreasonably withheld or delayed and shall be in HACSM’s reasonable discretion, and HACSM shall use good faith efforts to respond as promptly as practicable in order to facilitate effective and ongoing management of the Project. Furthermore, the identity and retention of any approved Property Manager shall not be changed without the prior written approval of HACSM, which approval shall not be unreasonably delayed, and shall be in HACSM’s reasonable discretion. The selection by Developer of any new Property Manager also shall be subject to the foregoing requirements. HACSM hereby approves MidPen Property Management as the initial Property Manager.

7.02 Management Plan. Prior to and as one of HACSM’s conditions to the Property Closing under the Agreement, Developer shall have prepared and submitted to the Executive Director for review and approval an updated and supplemented management plan which includes a detailed plan and strategy for long-term marketing for the Affordable Units, operation, maintenance, repair, and security of the Project, method of selection of tenants, rules and regulations for tenants, and other rental policies for the Affordable Units (the “**Management Plan**”). Subsequent to approval of the Management Plan by the Executive Director, the ongoing management and operation of the Project shall be in compliance with the approved Management Plan. Developer and Property Manager may from time to time submit to the Executive Director proposed amendments to the Management Plan, which are also subject to the prior written approval of the

Executive Director.

7.03 Social Services. Prior to and as one of HACSM's conditions to the Property Closing under the Agreement, Developer shall have prepared and submitted to the Executive Director for review and approval a resident services plan (the "**Resident Services Plan**"). Developer shall provide a variety of social services at the Project, as set forth in the Resident Services Plan. No changes may be made to the Resident Services Plan without the prior written approval of the Executive Director, which shall be given or withheld in his or her reasonable discretion. Developer's social service program shall be targeted to the needs of the residents of the Project which shall include, in addition to all of the services listed in Developer's applications for Tax Credits and Tax-Exempt Bonds (applicable only if Developer finances the Project with Tax-Exempt Bonds), the following services: after school programs of an ongoing nature for school age children, and the availability of a bona fide services coordinator or social worker to the tenants. Developer shall ensure that all personnel providing or coordinating all social services shall be adequately trained and counseled, including with respect to the appropriate means and methods of communicating and interacting with residents. Any substantive change in the scope, amount, or type of supportive services to be provided at the Property, whether or not such change requires a change to the Resident Services Plan, shall be subject to prior reasonable approval of HACSM. HACSM shall respond to any such proposed changes within thirty (30) days after submittal to HACSM by Developer.

7.04 Gross Mismanagement. In the event of "Gross Mismanagement" (as that term is defined below) of the Affordable Units or any part of the Project, HACSM shall have and retain the authority to direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and further to direct and require the immediate removal of the Property Manager and replacement with a new qualified and approved Property Manager, if such condition(s) is/are not ceased and/or corrected after expiration of thirty (30) days from the date of Notice from HACSM. If such condition(s) acts, or inactions of gross mismanagement do persist beyond such period, HACSM shall have the sole and absolute right to immediately and without further notice to Developer (or to Property Manager or any other person/entity) replace the Property Manager with a new property manager of HACSM's selection at the sole cost and expense of Developer. If Developer takes steps to select a new property manager that selection is subject to the requirements set forth above for selection of a Property Manager.

For purposes of this Regulatory Agreement, the term “**Gross Mismanagement**” shall mean management of any part of the Project in a manner which materially violates the terms and/or intention of this Regulatory Agreement to operate a high quality, well-managed residential complex, and shall include, but is not limited to, any one or more of the following:

- (a) knowingly leasing Affordable Units to tenants who exceed the prescribed income levels;
- (b) knowingly allowing the tenants of Affordable Units to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding;
- (c) underfunding Capital Replacement or Operating Reserve accounts, unless funds are not available to deposit in such accounts;
- (d) failing to timely maintain the Project in accordance with the Management Plan and the manner prescribed herein;
- (e) failing to submit timely and/or adequate annual reports to HACSM as required herein;
- (f) committing fraud or embezzlement with respect to Project funds, including without limitation funds in the reserve accounts;
- (g) failing to reasonably cooperate with the Fire District and/or any other local public safety agency(ies) with jurisdiction over the Project in maintaining a safe, crime-free environment within the Project;
- (h) spending funds from the Capital Reserve account(s) for items that are not defined as capital costs under the standards imposed by generally accepted accounting principles (GAAP) (and/or, as applicable, generally accepted auditing principles.)

Notwithstanding the requirements of the Property Manager to correct any condition of Gross Mismanagement as described above, Developer is obligated and shall use its best efforts to correct any defects in property management or operations at the earliest feasible time and, if necessary, to replace the Property Manager as provided above. Developer shall include advisement and provisions of the foregoing requirements and requirements of this Regulatory Agreement within any contract between Developer and

its Property Manager.

7.05 HACSM Inspections. HACSM and the County, and their employees and authorized agents shall have the right to conduct inspections of the Project and the individual Affordable Units, both exterior and interior, at reasonable times and upon reasonable notice (not less than 48 hours prior notice) to Developer and/or an individual tenant. If such notice is provided by City or its representative(s) to Developer, then Developer (or its Property Manager) shall immediately and directly advise tenants of such upcoming inspection and cause access to the area(s) and/or units to be made available and open for inspection. Developer shall include express advisement of such inspection rights within the lease/rental agreements for each Affordable Unit in order for each and every tenant and tenant household to be aware of this inspection right.

7.06 Drug Free Covenant. Developer shall use its best efforts to maintain a drug free environment on the Property. Developer covenants to HACSM that Developer shall use its best efforts to ensure that all persons working or residing on the Property shall not unlawfully manufacture, distribute, dispense, possess or use controlled substances, as said term is defined in 21 United States Code Section 812 and California Health and Safety Code Section 11007 (or successor statutes) on the Property.

SECTION 8. COVENANTS REGARDING NONDISCRIMINATION.

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

Developer agrees for itself and any successor in interest that Developer shall refrain from restricting the rental, sale, or lease of any portion of the Property, or contracts relating to the Property, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. All such deeds, leases, or contracts shall

contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

(b) **In leases:** “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: “That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(c) **In contracts:** “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this agreement, nor shall the grantee or any person claiming under or through

him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

The covenants established in this Regulatory Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of HACSM, its successors and assigns, the County and any successor in interest to the Property, together with any property acquired by Developer pursuant to this Regulatory Agreement, or any part thereof. The covenants against discrimination shall remain in effect in perpetuity.

SECTION 9. OPERATING BUDGET OR ANNUAL BUDGET; ANNUAL AND QUARTERLY REPORTS

9.01 Operating Budget. Developer shall submit to HACSM on or before November 1 of each year during the Affordability Period an operating budget for the Project (“**Operating Budget**” or “**Annual Budget**”), which budget, including the format thereof, shall be subject to the written approval of the Executive Director or designee, which approval shall not be unreasonably withheld or conditioned so long as such budget is not inconsistent with this Regulatory Agreement. The Executive Director’s discretion in review and approval of each proposed annual Operating Budget or Annual Budget shall include, without limitation, authority to review individual categories, line items, and accounts, such as the following: property and other taxes and assessments imposed on the Project; premiums for property damage and liability insurance; utility services not paid for directly by the tenants, including (as applicable), but not limited to, water, sewer, trash collection, gas, and electricity; maintenance and repairs including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial supplies; resident services pursuant to the Resident Services Plan; additional supportive services necessary to help residents maintain personal or household stability and housing status; any license or certificates of occupancy fees required for operation of the Project; general administrative expenses, including, but not limited to, advertising, marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and other; property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by HACSM (which such approval will not be

unreasonably withheld); asset management fees; annual cash deposited into the Capital Replacement Reserve in an amount of up to _____ Dollars (_____) per unit per year, provided any changes to the amount deposited into the Capital Replacement Reserve will require HACSM approval unless such change is a higher amount that is required by Developer's senior lender or the Investor, pursuant to the terms of the Partnership Agreement; cash deposited into the Operating Reserve for the Project and such other reserves as may be required by Developer's senior lender or the Investor; and debt service payments of loans in senior position to this loan. In the event Developer requires an amendment to an approved Annual Budget during an applicable year of the Affordability Period, then Developer shall submit a written request to the Executive Director explaining the requested amendment and reasons therefor; the Executive Director shall reasonably review and approve (or disapprove) each request for an amendment to an approved Annual Budget. The Executive Director shall communicate to Developer his or her reasonable approval or disapproval of a proposed annual Operating Budget or Annual Budget within thirty (30) days after receipt thereof; as to each amendment, the Executive Developer shall communicate to Developer his or her reasonable approval or disapproval within fifteen (15) days after receipt of a complete submittal requesting an amendment to an approved Annual Budget. In the event the Executive Director fails to approve a proposed annual Operating Budget or Annual Budget within thirty (30) days after receipt thereof, Developer may operate the Project in accordance with such proposed annual Operating Budget or Annual Budget until the Executive Director notifies Developer that such proposed annual Operating Budget or Annual Budget is not approved; provided, however, that in such case any expenditure made by Developer prior to the Executive Director's notification that the proposed annual Operating Budget or Annual Budget is not approved shall be deemed an approved expenditure.

9.02 Annual Reports. Developer covenants and agrees to submit to HACSM an annual report (the "Annual Report"), which shall include the information required by California Health & Safety Code Section 33418. The Annual Report shall include for each Affordable Unit the rental rate and the income and family size of the occupants. The Developer shall submit the Annual Report on or before _____ of the year following the year covered by the Annual Report. The Developer shall provide for the submission of household information and certification in its leases with tenants.

9.03 Quarterly Reports. Upon execution of this Regulatory Agreement and until permanent loan conversion, Developer shall also submit on a quarterly basis a quarterly

report for the management of the Property (the “**Quarterly Report**”). The Quarterly Report shall describe the Project-related tasks performed in the past 3 months and the expected Project-related tasks to be performed in the upcoming 3 months. The report should include an updated Project schedule, including a schedule for completing milestones and/or tasks, and should indicate the status of the Project in relationship to this timeline. Developer shall document any changes from the timeline submitted with the most recent funding application. From time to time, HACSM may request from Developer an updated Project proforma which shall include a development budget with sources and uses, debt sizing, calculations and pricing for the Tax Credits, 30-year operating proforma, base year income projection, and maintenance and operating expenses; Developer will have thirty (30) days to satisfy such request. The Quarterly Report shall be in a form that is reasonably acceptable to the Executive Director. The Executive Director, in his/her sole discretion may waive the requirement of the Quarterly Report for one or more quarterly reporting periods. However, such waiver shall not operate to waive any subsequent requirement of the Quarterly Report. After receipt of such certified financial statements for the Project, HACSM may request additional financial analysis or obtain a third party review at HACSM’s own expense, of financial statements for the Project to verify the accuracy of the rental payments by Developer under the Ground Lease, the payments by Developer on the HACSM Note, or the required deposits into the Capital Replacement Reserve.

SECTION 10. COVENANTS REGARDING CAPITAL REPLACEMENT RESERVE.

Promptly upon the issuance of the Certificate of Occupancy, Developer shall establish the Capital Replacement Reserve. Funds in the Capital Replacement Reserve shall be used only for capital repairs, improvements, and replacements to the Project fixtures and equipment which may be capitalized under generally accepted accounting principles. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve or lessen Developer’s obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to HACSM an accounting for the Capital Replacement Reserve. Capital repairs to and replacement of the Project shall include only those items with a long useful life, including, without limitation, the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and

seal coating; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; sewer line replacement; water line replacement; gas line pipe replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area repainting.

SECTION 11. COVENANTS REGARDING OPERATING RESERVE.

Promptly upon the issuance of the Certificate of Occupancy, Developer shall establish the Operating Reserve. The Operating Reserve shall be used to cover shortfalls between Annual Project Revenue and actual Operating Expenses, but shall in no event be used to pay for capital items or capital costs properly payable from the Capital Replacement Reserve. Developer shall, not less than once per every twelve (12) months, submit to HACSM evidence reasonably satisfactory to HACSM of compliance herewith.

SECTION 12. EFFECT OF VIOLATION OF THE TERMS AND PROVISIONS OF THIS REGULATORY AGREEMENT AFTER COMPLETION OF CONSTRUCTION.

HACSM is deemed the beneficiary of the terms and provisions of this Regulatory Agreement and of the covenants running with the land, without regard to whether HACSM has been, remains or is an owner of any land or interest therein in the Property or in the Project. HACSM shall have the right, if this Regulatory Agreement or any of the covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Regulatory Agreement and covenants may be entitled. The County is hereby deemed to be a third party beneficiary of this Regulatory Agreement and the covenants contained herein with the right, but not the obligation, to enforce the terms hereof. Except as provided in the following sentence, the covenants contained in this Regulatory Agreement shall remain in effect until the expiration of the Affordability Period. The covenants regarding discrimination as set forth in Section 8 shall remain in effect in perpetuity.

SECTION 13. COMPLIANCE WITH LAWS; ENVIRONMENTAL MATTERS.

13.01 Compliance With Laws. Developer shall comply with (i) all Governmental Requirements applicable to the Project and/or Property, including, without limitation, the

requirements of the RAP Amendment and any additional requirements of DTSC, including, without limitation, any existing or future land use covenants required by DTSC, and (ii) all rules and regulations of any assessment district of the City with jurisdiction over the Property.

13.02 Indemnity. Except as otherwise provided in Section 5.4 of the Agreement, Developer shall save, protect, defend, indemnify and hold harmless HACSM and County and HACSM and County Personnel from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines, and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees, and remedial and response costs) (the foregoing are hereinafter collectively referred to as "**Liabilities**") which may now or in the future be incurred or suffered by any of HACSM and County and HACSM and County Personnel by reason of, resulting from, in connection with, or existing in any manner whatsoever as a direct or indirect result of (i) Developer's placement on or under the Property of any Hazardous Materials or Hazardous Materials Contamination, (ii) the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination that occurs after the Property Closing Date, (iii) Developer's failure to comply with the RAP Amendment and any additional requirements of DTSC, including, without limitation, any existing or future land use covenants required by DTSC, or (iv) any Liabilities incurred under any Governmental Requirements relating to the acts described in the foregoing clauses (i), (ii), and (iii).

13.03 Duty to Prevent Hazardous Materials Contamination. Developer shall take commercially reasonable action to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards generally applied by apartment complexes in San Mateo County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials.

13.04 Obligation of Developer to Remediate Premises. Except as otherwise provided in Section 5.4 of the Agreement, notwithstanding the obligation of Developer to indemnify HACSM and County and HACSM and County Personnel pursuant to Section 13.02, and provided no Hazardous Materials exist on the Property as a result of HACSM's

actions, Developer shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state, regional, or local governmental agency or political subdivision or any Governmental Requirements and (ii) all actions necessary to make full economic use of the Property for the purposes contemplated by this Regulatory Agreement and the Agreement, which requirements or necessity arise from the presence upon, about or beneath the Property, of any Hazardous Materials or Hazardous Materials Contamination. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work.

13.05 Environmental Inquiries. Developer, when it has received any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, or cease and desist orders related to Hazardous Materials or Hazardous Materials Contamination, or when Developer is required to report to any governmental agency any violation or potential violation of any Governmental Requirement pertaining to Hazardous Materials or Hazardous Materials Contamination, shall concurrently notify the Executive Director, and provide to him/her a copy or copies, of the environmental permits, disclosures, applications, entitlements, or inquiries relating to the Property, the notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to the Executive Director, as soon as possible after each incident, any unusual, potentially important incidents.

In the event of a responsible release of any Hazardous Materials into the environment, Developer shall, as soon as possible after it becomes aware of the release, furnish to the Executive Director a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Executive Director, Developer shall furnish to the Executive Director a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

SECTION 14. INSURANCE REQUIREMENTS.

14.01 Commercial General Automobile Liability; Worker's Compensation.
Commencing on the Property Closing Date and continuing throughout the term of the Ground Lease, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the Executive Director, the following policies of insurance:

(a) Commercial General Liability Insurance covering bodily injury, property damage, personal injury and advertising injury written on a per-occurrence and not a claims-made basis containing the following minimum limits:(i) general aggregate limit (including excess coverage) of Five Million Dollars (\$5,000,000.00); (ii) products-completed operations aggregate limit of Three Million Dollars (\$3,000,000.00); (iii) personal and advertising injury limit of Three Million Dollars (\$3,000,000.00); and (iv) each occurrence limit of Three Million Dollars (\$3,000,000.00). Said policy shall include the following coverages:(i) blanket contractual liability (specifically covering the indemnification clause contained below); (ii) products and completed operations; (iii) independent contractors; (iv) Owner's broad form property damage; (v) severability of interest; (vi) cross liability; and (vii) property damage liability arising out of the so-called "XCU" hazards (explosion, collapse and underground hazards). The policy shall be endorsed to have the general aggregate apply to this Project only.

(b) A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for HACSM and Developer against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Developer in the course of carrying out the work or services contemplated in this Regulatory Agreement, and Employers Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit for all damages arising from each accident or occupational disease.

(c) A policy of comprehensive automobile liability insurance written on a per-occurrence basis in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit covering all owned, non-owned, leased and hired vehicles used in connection with the Work; provided, however, that if Developer does not own vehicles it may satisfy this provision through a rider to its general liability coverage for non-owned/hired vehicles.

14.02 Builder's Risk. Commencing on the Property Closing Date and continuing until HACSM issues a Release of Construction Covenants for the Project, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to HACSM's Executive Director, Builder's Risk (course of construction) insurance coverage in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as the City issues a final certificate of occupancy for the Project, and storage and transportation risks. Such insurance shall protect/insure the interests of Developer/owner and all of Developer's contractor(s), and subcontractors, as each of their interests may appear. If such insurance includes an exclusion for "design error," such exclusion shall only be for the object or portion which failed. HACSM shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

14.03 Property; Business Interruption; Boiler and Machinery Insurance. Commencing on the date HACSM issues a Release of Construction Covenants for the Project and continuing throughout the term of the Ground Lease, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to HACSM's Executive Director, the following insurance:

(a) Insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in San Mateo County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquakes to the extent generally and commercially available at commercially reasonable rates, if such insurance is generally obtained for affordable Projects in the counties of San Mateo and San Francisco. HACSM shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

(b) Business interruption and extra expense insurance to protect HACSM and Developer covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project caused by loss or damage to, or destruction of, any part of the insurable real property structures or equipment as a result of the perils insured against under the all risk

physical damage insurance, covering a period of suspension, delay or interruption of at least twelve (12) months, in an amount not less than the amount required to cover such business interruption and/or extra expense loss during such period.

(c) Boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance.

14.04 Contract Insurance Requirements. Developer shall cause any general contractor with whom it has contracted for the performance of work on the Property to secure, prior to commencing any activities hereunder and maintain insurance that satisfies all of the requirements of this Section 14.

14.05 Additional Requirements. The following additional requirements shall apply to all of the above policies of insurance:

(a) All of the above policies of insurance shall be primary insurance and, except the Worker's Compensation, Employer Liability insurance, and automobile liability insurance, shall name HACSM and County and HACSM and County Personnel as additional insureds on an ISO Form CG 20:10 (current version) or substantially similar form and not an ISO Form CG 20:09. The insurer shall waive all rights of subrogation and contribution it may have against any of HACSM and County and HACSM and County Personnel and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice to HACSM. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Executive Director. Not later than the Effective, Developer shall provide the Executive Director with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders shall be subject to the reasonable approval of the Executive Director.

(b) The policies of insurance required by this Regulatory Agreement shall be satisfactory only if issued by companies of recognized good standing authorized to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Executive Director due to unique circumstances.

(c) The Executive Director is hereby authorized to reduce or otherwise modify Developer's insurance requirements set forth herein in the event they collectively determine, in their sole and absolute discretion, that such reduction or modification is consistent with reasonable commercial practices.

(d) The Developer agrees that the provisions of this Section shall not be construed as limiting in any way HACSM's right to indemnification or the extent to which Developer may be held responsible for the payment of damages to any persons or property resulting from Developer's activities or the activities of any person or persons for which Developer is otherwise responsible.

14.06 Indemnification. Developer shall defend (by counsel satisfactory to HACSM), assume all responsibility for and hold HACSM and County and HACSM and County Personnel harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, attorney's fees and costs), which may be caused by the activities or performance of Developer or any of Developer's employees, agents, representatives, contractors, or subcontractors under (i) this Regulatory Agreement, (ii) a claim, demand or cause of action that any person has or asserts against Developer; (iii) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Property; or (iv) the leasehold, occupancy or use of the Property by Developer, whether such damage shall accrue or be discovered before or after termination of this Regulatory Agreement. The obligations and indemnifications in this Section 14.06 shall constitute covenants running with the land.

SECTION 15. ASSIGNMENT.

15.01 Generally Prohibited. Except as otherwise expressly provided to the contrary in this Regulatory Agreement, Developer shall not assign any of its rights or delegate any of its duties under this Regulatory Agreement, nor shall any changes occur with respect to the ownership and/or control of Developer, including, without limitation, stock transfers, sales of issuances, or transfers, sales or issuances of membership or ownership interests, or statutory conversions, without the prior written consent of the Executive Director, which consent may be withheld in his or her sole and absolute discretion. Any such assignment or delegation without such consent shall, at HACSM's option, be void. Notwithstanding the foregoing, however, (i) Developer may admit Developer's Tax Credit investor (the "**Investor**") as a 99.99% Tax Credit limited partner

without obtaining any consent, and such Investor may assign its interests as a 99.99% Tax Credit limited partner to a subsequent reputable institutional investor without any consent; (ii) Developer may transfer the Project to MidPen or an Affiliate of MidPen pursuant to the right of first refusal or purchase option entered into between MidPen and the Partnership at the Property Closing pursuant to the Partnership Agreement; and (iii) the Investor may remove the general partner for a default under the Partnership Agreement, provided the replacement general partner is reasonably acceptable to HACSM. For purposes of this Section 15.01, if the Investor transfers to an entity in which the Investor or an Affiliate of the Investor is the general partner or managing member such transferee entity shall be deemed to be a “reputable institutional investor.” This Section 15.01 shall not be applicable to the leasing of Affordable Units to Eligible Tenants in accordance with this Regulatory Agreement.

15.02 Release of Developer. Upon any such assignment made in compliance with Section 15.01 above which is evidenced by a written assignment and assumption agreement in a form approved by HACSM’s counsel, Developer shall be released from any liability under this Regulatory Agreement arising from and after the date of such assignment.

SECTION 16. DEFAULTS AND REMEDIES.

16.01 Default. Subject to the extensions of time set forth in Section 17.02 of this Regulatory Agreement, failure by either Party to perform any action or covenant required by this Regulatory Agreement or under the Agreement or under the Ground Lease within the time periods provided herein and therein following Notice and failure to cure as described hereafter, constitutes a “Default” under this Regulatory Agreement. A Party claiming a Default shall give written Notice of Default to the other Party specifying such Default. Except as otherwise expressly provided in this Regulatory Agreement or in the Agreement or in the Ground Lease, the claimant shall not institute any proceeding against any other Party, and the other Party shall not be in Default if such party within thirty (30) days from receipt of such Notice, cures, corrects or remedies such failure or delay, or if such Default cannot reasonably be cured within thirty (30) days, such Party commences such cure within thirty (30) days of receipt of such Notice and thereafter diligently prosecutes such cure to completion.

16.02 Remedies; Institution of Legal Actions. Developer’s sole remedy for HACSM’s breach of this Regulatory Agreement shall be to institute an action at law or

equity to seek specific performance of the terms of this Regulatory Agreement. Developer shall not be entitled to recover damages for any Default of HACSM hereunder. HACSM shall be entitled to seek any remedy available at law and in equity for Developer's breach of this Regulatory Agreement. All legal actions must be instituted in the Superior Court of the County of San Mateo, State of California, or in the United States District Court for District of California in which San Mateo County is located.

16.03 Termination by HACSM. In the event that Developer is in Default of this Regulatory Agreement, the Agreement, or the Ground Lease and (i) such Default is material and (ii) Developer fails to cure such Default within the time set forth in Section 16.01 hereof, then HACSM may, at HACSM's option, terminate this Regulatory Agreement.

16.04 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against HACSM, service of process on HACSM shall be made by personal service upon the Executive Director or in such other manner as may be provided by law. In the event that any legal action is commenced by HACSM against Developer, service of process on Developer shall be made in such manner as may be provided by law.

16.05 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Regulatory Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

16.06 Inaction Not a Waiver of Default. Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

16.07 Applicable Law. The internal laws of the State of California shall govern the interpretation and enforcement of this Regulatory Agreement, without regard to conflict of law principles.

SECTION 17. GENERAL PROVISIONS.

Notices, Demands and Communications Between the Parties. Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Regulatory Agreement from one Party to another (collectively, “**Notices**”) may be personally delivered, delivered by reputable courier that provides a receipt with the date and time of delivery, or deposited with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this Section, and shall be deemed to have been given or sent at the time of personal delivery, delivery by courier, or, if mailed, on the second day following the date of deposit in the course of transmission with the United States Postal Service. Notices shall be sent as follows:

If to Developer: MP Midway Associates I, L.P.
c/o MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: Jan Lindenthal
Telephone No.: 650-356-2919

with a copy to: Gubb & Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan Gross, Esq.
Telephone No.: 415-781-6600 ext. 6

If to HACSM: Housing Authority of the County of San Mateo
264 Harbor Blvd., Building A
Belmont, CA 94002-4017
Attn: Executive Director
Reference: Midway/Bayshore Redevelopment Project
Telephone No.: 650-802-5024

with a copy to Monali Sheth, Esq.
San Mateo County Counsel's Office
400 County Center, 6th Floor
Redwood City, CA 94063
Telephone No.: 650-363-4697

and to

Rutan & Tucker, LLP
611 Anton, Suite 1400
Costa Mesa, CA 92626
Phone No.: 714-641-5100
Attention: Allison LeMoine-Bui, Esq.

17.01 Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Regulatory Agreement, performance by either Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Regulatory Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine; restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other Party; acts or failures to act of any public or governmental agency or entity (other than the acts or failures to act of HACSM which shall not excuse performance by HACSM); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Regulatory Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Times of performance under this Regulatory Agreement may also be extended in writing by the mutual agreement of HACSM and Developer. Notwithstanding any provision of this Regulatory Agreement to the contrary, the lack of funding to complete the construction of the Project shall not constitute grounds of enforced delay pursuant to this Section.

17.02 Relationship Between HACSM and Developer. It is hereby acknowledged by Developer that the relationship between HACSM and Developer is not that of a

partnership or joint venture and that HACSM and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, with the exception of any provisions expressly set forth to the contrary in the Agreement, herein, or in the exhibits hereto, HACSM shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project. Developer agrees to indemnify, hold harmless and defend HACSM from any claim made against HACSM arising from a claimed relationship of partnership or joint venture between HACSM and Developer with respect to the development, operation, maintenance or management of the Property or the Project, except to the extent occasioned by the active negligence or willful misconduct of HACSM or its designated agents or employees.

17.03 No Third Party Rights. The Parties intend that no rights nor remedies be granted to any third party as a beneficiary of this Regulatory Agreement or of any covenant, duty, obligation or undertaking established herein.

17.04 HACSM Approvals and Actions. This Regulatory Agreement shall be administered and executed on behalf of HACSM by the Executive Director. The Executive Director shall have the authority to issue interpretations, waive terms and conditions, enter into implementing agreements and amendments of this Regulatory Agreement on behalf of HACSM provided that such actions do not substantially change the uses or development permitted on the Property, materially add to the costs or obligations, increase the risk of liability, or impair the rights or remedies, of HACSM provided herein, or materially decrease the revenues or other compensation to be received by HACSM hereby. All other waivers or amendments shall require the formal consent of the Board of Directors of HACSM.

17.05 Counterparts. This Regulatory Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

17.06 Integration. This Regulatory Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Regulatory Agreement. Each Party is entering this Regulatory Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such party deems material. This Regulatory Agreement constitutes the entire understanding and agreement of the Parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

17.07 Real Estate Brokerage Commission. HACSM and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part.

17.08 Attorneys' Fees. In any action between the Parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with, any of the terms or provisions of this Regulatory Agreement, the prevailing Party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs, expenses including, without limitation, litigation costs, reasonable attorneys' fees, and expert witness fees.

17.09 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe, or limit the scope or the intent of this Regulatory Agreement or of any of its terms. Reference to section numbers are to sections in this Regulatory Agreement, unless expressly stated otherwise.

17.10 Interpretation. As used in this Regulatory Agreement, masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Regulatory Agreement shall be interpreted as though prepared jointly by both Parties.

17.11 No Waiver. All waivers of the provisions of this Regulatory Agreement must be in writing by the appropriate authorities of Developer and HACSM. A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Regulatory Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Regulatory Agreement.

17.12 Modifications. Any alteration, change or modification of or to this Regulatory Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

17.13 Severability. If any term, provision, condition or covenant of this Regulatory Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Regulatory Agreement, or the application

of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

17.14 Computation of Time. The time in which any act is to be done under this Regulatory Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

17.15 Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Regulatory Agreement, and in signing this Regulatory Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Regulatory Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Regulatory Agreement; and, they have freely signed this Regulatory Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Regulatory Agreement, and without duress or coercion, whether economic or otherwise.

17.16 Time of Essence. Time is expressly made of the essence with respect to the performance by HACSM and Developer of each and every obligation and condition of this Regulatory Agreement.

17.17 Cooperation. Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Regulatory Agreement including, but not limited to, releases or additional agreements.

17.18 Non-Liability of Officials and Employees of HACSM and the County. No member, director, officer, employee, or volunteer of HACSM or the County shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by HACSM or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Regulatory Agreement. Developer hereby waives and releases any claim it may have against any of the HACSM and County and HACSM and County Personnel with respect to any Default or breach by

HACSM or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Regulatory Agreement. Developer makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Developer's Initials

[End – signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Regulatory Agreement as of the respective dates set forth below.

“HACSM”

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO, a public body, corporate and politic

Date: _____

By: _____

Raymond Hodges, Executive Director

“Developer”

MP MIDWAY ASSOCIATES I, L.P., a California limited partnership

By: MP Midway I, LLC, a California limited liability company,

Its: General partner

By: Mid-Peninsula Half Moon Bay, Inc., a California nonprofit public benefit corporation,

Its: Sole member/manager

Date: _____

By: _____

Jan M. Lindenthal
Assistant Secretary

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who 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.

Signature _____

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who 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.

Signature _____

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

MAP

[See following page]

ATTACHMENT NO. 13

SCHWERIN STREET

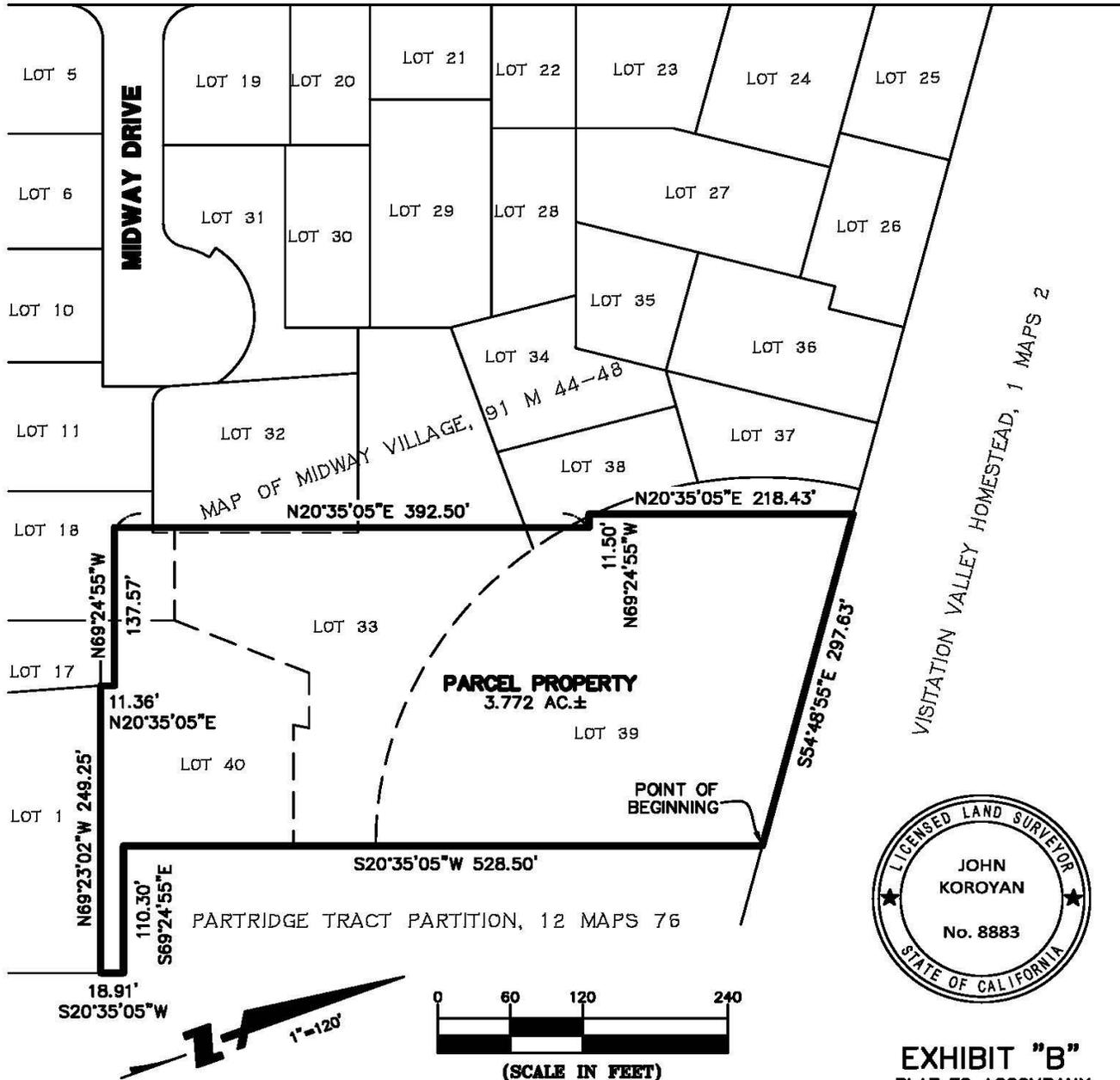


EXHIBIT "B"
 PLAT TO ACCOMPANY
 LEGAL DESCRIPTION

K:\2018\181024_MIDWAY_VILLAGE\SUR\DWG\PLATS\MIDWAY_VILLAGE_PHASE 1_PLAT.DWG



1730 N. FIRST STREET
 SUITE 600
 SAN JOSE, CA 95112
 408-467-9100
 408-467-9199 (FAX)

Subject PARCEL PROPERTY
47 MIDWAY DRIVE, DALY CITY, CA
 Job No. 20181024
 By JG Date 07-17-20 Chkd. JVK
 SHEET 1 OF 1

EXHIBIT C
INCOME COMPUTATION AND CERTIFICATION FORM

(See following document)

ATTACHMENT NO. 13

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO
264 Harbor Boulevard, Building A, Belmont, CA94002-4017

INCOME COMPUTATION AND CERTIFICATION FORM
(Affordable Housing Eligibility for Renter Occupied Unit)

PART I. PROPERTY FINANCED WITH GOVERNMENT ASSISTANCE

Property Address: _____

PART II. TENANT HOUSEHOLD INFORMATION

		Date of Birth	Soc. Sec. #	Relationship

TOTAL NUMBER OF PERSONS IN HOUSEHOLD: _____ (Please list information on other household members below)

Mailing Address: _____ Telephone Numbers: Work(____)

 _____ Home (____) _____

PART III. GROSS HOUSEHOLD INCOME Complete the following, attach copies of required verification as specified below. Attach a note explaining any significant changes in household income between the previous year and the current year. INFORMATION IS REQUIRED FOR ALL MEMBERS OF THE HOUSEHOLD AGE 18 OR OLDER REGARDLESS OF WHETHER THEY CONTRIBUTE TO THE COSTS OF THE HOUSEHOLD. If you are not required to file a

tax return, please indicate this in Part V by your signature.

	ANN INCOME	ANN INCOME	
INCOME SOURCES	for owner	others in hshld	VERIFICATIONS (needed for file)
A. Employment earnings			Last tax return & last 3 pay stubs, employer verification
B. Self-employment earnings			Last 2 tax returns & current financial stmt
C. Social Security (OASDI)			Annual award letter
D. Supplemental Security Income (SSI)			Annual award letter
E. Public assistance (AFDC, general assistance, unemployment, etc.)			Current benefit statement
F. Pension (s)			Annual award letter, year end stmt, W-2
G. Interest income			Last 2 statements for all accounts
H. Investment income (stocks, bonds, real estate, etc.)			Last 2 statements for all accounts
I. Room rental			Rental agreement, copies of checks, etc.
J. Other income (list type/source)			
K. TOTAL INCOME (sum of A thru J)			/ 12 months = _____ mo. income

PART IV. PROPERTY STATUS

Will this property be your primary residence? _____

Will someone other than the individuals listed above be occupying this property? _____

If yes - Name of occupants: _____

Telephone Number: _____ Mailing Address: _____

My/our housing expenses are as follows:

1.Monthly tenant rent _____

2.Average monthly utilities _____

PART V. TENANT CERTIFICATION

I/We understand that after the initial eligibility determination, completion of monitoring forms is required on an annual basis. I/We certify that I/we have disclosed all information pertaining to my/our application and that the information presented in the foregoing Sections I through IV is true and accurate to the best of my (our) knowledge.

Tenant Date

Tenant Date

For more information regarding this application, please contact management staff at (760) _____.

FOR OFFICE USE ONLY

_____ Information verified

_____ Income category

ATTACHMENT NO. 13

_____ Maximum allowable annual income (_____ % of median)

_____ Applicant's annual income _____ gross monthly _____ max housing costs

Comments: _____

Management Staff Date

EXHIBIT D
INCOME RECERTIFICATION FORM

(See following document)

ATTACHMENT NO. 13

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO
264 Harbor Boulevard, Building A, Belmont, CA 94002-4017

INCOME RECERTIFICATION FORM
(Renter Occupied Unit)

PART I. GENERAL INFORMATION

1. Property Owner Name _____
2. Renter Name _____
3. Property Address _____
Daly City, CA _____ (Please include P.O. Box No. if applicable)
4. Has there been a change in ownership of this property during the preceding 12 month period?
Yes()No()

(If yes, please explain) _____

PART II. UNIT INFORMATION

5. Number of Bedrooms _____
6. Number of Occupants _____
Names: _____

PART III. AFFIDAVIT OF RENTER

I, _____, and I, _____, as renters of units assisted pursuant to the Housing Authority of the County of San Mateo ("HACSM") Affordable Housing Program (the "Program"), do hereby represent and warrant that the following computation includes all income (I/we) **anticipate receiving for the 12-month period commencing on January 1, 20__** (including the renter(s) and all family members of the renters):

- (a) amount of wages, salaries, overtime pay, commissions, fees, tips and bonuses, and payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (before payroll deduction)
- (b) net income from business or profession or rental of property (without deduction for repayment of debts or expansion of business)
- (c) interest and dividends
- (d) periodic receipts such as social security, annuities, pensions, retirement funds, insurance policies, disability or death benefits, alimony, child support, regular contributions or gifts from persons not occupying unit
- (e) public assistance allowance or grant plus excess of maximum allowable for shelter or utilities over the actual allowance for such purposes

(f) regular and special pay and allowances of a member of armed services (whether or not living in the dwelling) who is head of the family or spouse _____

(f) Subtotal (a) _____ through _____

LESS: Portion of above items which are income of a family member who is less than 18 years old or a full-time student (_____)

TOTAL ELIGIBLE INCOME _____

NOTE: The following items are not considered income: casual or sporadic gifts; amounts specifically for or in reimbursement of medical expenses; lump sum payment such as inheritances, insurance payments, capital gains and settlement for personal or property losses; educational scholarships paid directly to the student or educational institution; government benefits to a veteran for education; special pay to a serviceman head of family away from home and under hostile fire; foster child care payments; value of coupon allotments for purpose of food under Food Stamp Act of 1964 which is in excess of amount actually charged the eligible household; relocation payments under Title II of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; payments received pursuant to participation in the following programs: VISTA, Service Learning Programs, and Special Volunteer Programs, SCORE, ACE, Retired Senior Volunteer Program, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience.

2. This affidavit is made with the knowledge that it will be relied upon by the Landlord and HACSM to determine maximum income for eligibility and (I/we) warrant that all information set forth in this Part III is true, correct and complete and based upon information (I/we) deem reliable and that the estimate contained in paragraph 1 is reasonable and based upon such investigation as the undersigned deemed necessary.
3. (I/We) will assist the Landlord and HACSM in obtaining any information or documents required to verify the statements made in this Part III and have **attached hereto a copy of our federal income tax return for the last year (20__)**.
4. (I/We) acknowledge that (I/we) have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of (my/our) agreement with the Landlord to rent the unit and will additionally enable HACSM to initiate and pursue all applicable legal and equitable remedies with respect to the unit and to me/us.

B. (My/Our) monthly housing expenses are limited to the following:

1. Base rent _____
2. Average Monthly Utilities _____
3. Other (explain) _____

(I/We) understand that completion of monitoring forms is required on an annual basis and agree to notify HACSM in writing of any change in ownership or rental of the unit. (I/We) do hereby swear under penalty of perjury that the foregoing statements are true and correct.

Date _____ Renter(s) _____

EXHIBIT E

FORM OF CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

(See following document)

CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

The undersigned, being duly authorized to execute this certificate on behalf of _____, owner of the _____ Project, hereby represents and warrants that:

1. He/she has read and is thoroughly familiar with the provisions of the Affordable Housing Regulatory Agreement between HACSM and _____.

2. As of June 30, 20__, the following number of residential units in the Project (i) are currently occupied by tenants qualifying as _____ Income Households at Affordable Rents; (ii) are currently occupied by tenants qualifying as _____ Income Households at Affordable Rents; (iii) are currently occupied by tenants qualifying as _____ Income Households at Affordable Rents; or (iv) are currently vacant and being held available for occupancy by Eligible Tenants and have been so held continuously since the date Eligible Tenants vacated such unit, as indicated:

- i. _____ Units occupied by _____ Income Households
- ii. _____ Units occupied by _____ Income Households
- iii. _____ Units occupied by _____ Income Households
- iv. _____ vacant Units

3. The unit number, unit size, rental amount charged and collected, number of occupants, and the income of the occupants for each Affordable Unit in the Project are set forth on the attached list. All Affordable Units in the Project are rented at Affordable Rent.

DEVELOPER NAME

_____,
a California limited partnership

Dated: _____, 20__

By: _____

(Printed name and title)

ATTACHMENT NO. 14

RELEASE OF CONSTRUCTION COVENANTS

(See following document)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

County of San Mateo Department
of Housing
264 Harbor Blvd., Building A
Belmont, CA 94002-4017
Attn: Barbara Deffenderfer

(Space Above for Recorder's Use)

(Exempt from Recordation Fee per Gov. Code 27383)

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS ("Release") is made this ____ day of _____, by the HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO, a public body, corporate and politic ("HACSM"), in favor of MP MIDWAY ASSOCIATES I, L.P., a California limited partnership ("Developer").

R E C I T A L S

A. Developer has a leasehold interest in that certain real property located in the City of Daly City, County of San Mateo, State of California, more particularly described in the legal description attached hereto as Exhibit "A" ("Property").

B. On or about _____, HACSM and Developer entered into that certain Affordable Housing and Property Disposition Agreement ("Agreement") which provides for Developer to develop on the Property a one hundred forty-seven (147) unit rental affordable housing development, as more particularly described therein as the "Project."

C. Pursuant to the Agreement, HACSM is required to furnish Developer with this Release upon request by Developer after completion of construction of the Project.

D. The issuance by HACSM of this Release shall be conclusive evidence that Developer has complied with the terms of the Agreement pertaining to the construction of the Project.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the parties hereto agree as follows:

1. As provided in the Agreement, HACSM does hereby certify that the construction of the Project has been satisfactorily performed and completed, and that such development and construction work complies with the Agreement.

2. This Release does not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage security money loaned to finance the work of construction of improvements and development of the Property, or any part of thereof.

3. This Release is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4. This Release does not terminate any other agreement or document executed by Developer in connection with the Agreement, including, without limitation, that certain Affordable Housing Regulatory Agreement recorded on _____, as Instrument No. _____, in the Official Records of the County of San Mateo (the "Official Records"), that certain Ground Lease entered into by and between Developer and HACSM on or about _____, as referenced in that certain Memorandum of Unrecorded Ground Lease recorded on _____, as Instrument No. _____, in the Official Records, and that certain Deed of Trust recorded on _____, as Instrument No. _____, in the Official Records, all of which shall survive recordation of this Release.

IN WITNESS WHEREOF, HACSM has executed this Release as of the date set forth above.

**HOUSING AUTHORITY OF THE
COUNTY OF SAN MATEO**, a public
body, corporate and politic

Date: _____

By: _____

Raymond Hodges, Executive Director

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who 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.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

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- 2 - Legal Description of Bayshore Childcare Property
- 3 - Legal Description of Park Property
- 4 - Legal Description of Property
- 5 - Site Plan
- 6 - Schedule of Performance
- 7 - Scope of Development
- 8 - Form of Assignment of Plans and Contract
- 9 - Form of the HACSM Note
- 10 - Form of the HACSM Deed of Trust
- 11 - Preliminary Project Budget
- 12 - Form of Ground Lease
- 13 - Form of HACSM Regulatory Agreement
- 14 - Form of Release of Construction Covenants