

AFFORDABLE HOUSING AND PROPERTY DISPOSITION AGREEMENT

By and Between

COUNTY OF SAN MATEO

and

MERCY HOUSING CALIFORNIA 96, L.P.

Dated as of March 12, 2021

AFFORDABLE HOUSING AND PROPERTY DISPOSITION AGREEMENT

THIS AFFORDABLE HOUSING AND PROPERTY DISPOSITION AGREEMENT (the “**Agreement**”) is made and entered into as of March 12, 2021 (the “**Effective Date**”), by and between COUNTY OF SAN MATEO, a political subdivision of the State of California (the “**County**”), and MERCY HOUSING CALIFORNIA 96, L.P., a California limited partnership (the “**Developer**”). County and Developer are sometimes referred to hereinafter individually as a “Party” and collectively as the “Parties.”

RECITALS

A. County owns fee title to that unimproved certain real property located at 2700 Middlefield Road, Redwood City, in unincorporated County of San Mateo, CA 94063 (APN: 054-113-140) (the “**Property**”).

B. On July 11, 2018, County issued a Request for Proposals (“**RFP**”) to select a developer to develop an affordable housing development with childcare center or other public serving use on the Property.

C. Through a competitive process, Mercy Housing California, a California nonprofit public benefit corporation (“**Mercy**”), was selected to develop the proposed development on the Property. Mercy was established to develop and operate safe, decent affordable housing in California.

D. Developer is a California limited partnership, the general partner of which is Middlefield Junction LLC, a California limited liability company, of which Mercy Housing Calwest, an affiliate of Mercy, is its sole member/manager.

E. On or about March 4, 2019, County and Mercy entered into that certain Exclusive Negotiating Rights Agreement, pursuant to which County agreed to permit Mercy to enter the Property and conduct due diligence studies and investigations, and County and Mercy agreed to negotiate in good faith and attempt to establish the terms and conditions on which County would lease the Property to Mercy (or an affiliate thereof), for Mercy’s development and operation of an affordable housing and property disposition agreement, and to resolve issues associated with a childcare center or other community servicing use contemplated for a portion of the Property during the RFP process (the “**ENRA**”).

F. The “Negotiating Period” under the Original ENRA has been extended on several prior occasions, as follows: (i) by administrative approval granted by the Director of Housing, pursuant to that certain Letter Agreement re Extension to Negotiating Period, dated October 30, 2019, which extended the Negotiating Period to January 28, 2020 (the “**First Administrative Extension**”), (ii) pursuant to that certain First Amendment to Exclusive Negotiating Rights Agreement, dated January 6, 2020, which extended the Negotiating Period to July 31, 2020 (the “**First Amendment**”), (iii) pursuant to that certain Second Amendment to Exclusive Negotiating Rights Agreement, dated July 21, 2020, which extended the Negotiating Period to October 31, 2020 (the “**Second Amendment**”),

and (iv) by administrative approval granted by the Director of Housing, pursuant to that certain Second Letter Agreement re Extension to Negotiating Period, dated November 16, 2020, which extended the Negotiating Period to December 31, 2020 (the “**Second Administrative Extension**”). The Original ENRA, as modified by the First Administrative Extension, by the First Amendment, by the Second Amendment, and by the Second Administrative Extension is hereinafter referred to as the “**ENRA**.” The ENRA is available for public inspection at the office of County.

G. On or about June 1, 2020, the Housing Authority of the County of San Mateo, a public body, corporate and politic (“**HACSM**”) and Developer entered into that certain Predevelopment Agreement pursuant to which HACSM agreed to provide Developer with a predevelopment loan in the amount of One Million Nine Hundred Thirty Thousand Dollars (\$1,930,000) (the “**Predevelopment Loan**”) to cover the costs incurred by Developer for the preparation of studies, reports, plans, designs, and drawings necessary for entitling the Property and developing an affordable housing development on the Property (the “**Predevelopment Agreement**”). The Predevelopment Agreement is available for public inspection at the offices of County and HACSM, at 264 Harbor Blvd., Building A, Belmont, CA 94002-4017.

H. The Parties now desire to enter into this Agreement to set forth the terms and conditions on which County will ground lease the Property to Developer for Developer’s development and subsequent operation thereon of a rental affordable housing development containing one hundred seventy-nine (179) rental dwelling units, a community serving space and office space, and a childcare facility (the “**Project**”). The Property consists of approximately three and two tenths (3.2) acres, and is more particularly described in Attachment No. 1 to this Agreement.

I. 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 County’s goals to provide permanent affordable housing 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, County 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.

“Building Permit” means all permits issued by County and required for commencement of construction of the Project.

“CDLAC” means the California Debt Limit Allocation Committee.

“Construction Contract” has the meaning set forth in Section 7.2(f) 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.

“County/Lender Subordination Agreement” means, with respect to the Property Closing, (i) a subordination agreement between County and the Construction Lender, pursuant to which the Construction Lender agrees to subordinate the Construction Loan Security Documents to the County Regulatory Agreement, and, with respect to the closing of the Take-Out Loan at conversion, (ii) a subordination agreement between County and the Take-Out Lender, pursuant to which the Take-Out Lender agrees to subordinate the documents securing the Take-Out Loan to the County Regulatory Agreement.

“County Regulatory Agreement” means a regulatory agreement substantially in the form attached hereto and incorporated herein as Attachment No. 7, which will establish certain restrictive covenants against the Property.

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

“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(f) of this Agreement.

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

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

“Escrow Holder” means Old Republic Title Company, with its offices located at 275 Battery Street, #1500, San Francisco, CA 94111, or such other escrow company as may be agreed to by Developer and the Director.

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

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

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

“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, and of any other political subdivision, agency or instrumentality exercising jurisdiction over County, 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. 6, to be executed by Developer and County to set forth the terms and conditions for County’s lease of the Property to Developer.

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

“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 County, HACSM, 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.

“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(m) 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 one hundred ninety-four (194) days after the first date on which Developer has received an allocation of Tax Credits from TCAC; provided, however, that such date may be extended to the extent the required closing date is extended by CDLAC and/or TCAC.

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

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

“Preliminary Project Budget” shall mean that certain preliminary project budget attached hereto and incorporated herein as Attachment No. 5.

“Project” means Developer’s construction of (i) an affordable rental housing development consisting of one hundred seventy-nine (179) residential rental dwelling units, with one hundred seventy-seven (177) of such units restricted for rental to and occupancy by income-qualified households, and all required on-site improvements necessary to serve the development, (ii) a community-serving space, and (iii) a childcare facility, all in accordance with this Agreement, including, without limitation, the Scope of Development, the Land Use Entitlements, and the Final Construction Documents.

“Project Architect” means BAR Architects, or such other architect or architectural firm as may be approved by the 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 County Regulatory Agreement, the Memorandum of Ground Lease, and any other agreement, document or instrument that Developer and County enter into pursuant to this Agreement or in order to effectuate the purposes of this Agreement.

“Property” means that certain real property referred to in Recital A and legally described in Attachment No. 1 and depicted in Attachment No. 2, both of which attachments are attached hereto and incorporated herein by this reference. The Property comprises approximately three and two-tenths (3.2) acres.

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

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

“Release of Construction Covenants” means a release document substantially in the form attached hereto and incorporated herein as Attachment No. 8, to be executed by County 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(o) of this Agreement

“Schedule of Performance” means the Schedule of Performance attached hereto and incorporated herein as Attachment No. 3.

“Scope of Development” means the Scope of Development attached hereto and incorporated herein as Attachment No. 4.

“Site Map” means the site map attached hereto and incorporated herein as Attachment No. 2.

“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.

“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 275 Battery Street, #1500, San Francisco, CA 94111, or such other title insurance company as may be agreed to by Developer and the Director.

2. DEVELOPER

Developer is a California limited partnership, the general partner of which is Middlefield Junction LLC, a California limited liability company, of which Mercy Housing Calwest, an affiliate of Mercy, is its sole member/manager.

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 and County acknowledge and agree that prior to the Effective Date, Developer obtained all discretionary governmental permits and approvals necessary to allow Developer to develop the Project in the manner required by this Agreement (collectively, the “**Land Use Entitlements**”), and that Developer approved all of the Land Use Entitlements, including all of the terms and conditions pertaining thereto.

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

5.1 Permission to Enter Property. Developer acknowledges and agrees that Developer, through its Affiliate Mercy, has had ample opportunity pursuant to the terms of the ENRA to examine, inspect, and investigate the physical and environmental condition of the Property, and has approved the physical and environmental condition of the Property and determined it is acceptable to Developer and suitable for Developer’s intended use. Commencing as of the Effective Date, Developer and Developer’s representatives and agents shall be entitled to enter onto the Property to conduct additional examinations and investigations at any time through the Property Closing.

As a condition to Developer’s entry onto the Property prior to the Property Closing, Developer shall provide to County a copy of all reports, studies and test results prepared by Developer’s consultants as a result of such additional examinations and/or investigations, without representation or warranty. Developer shall submit a written request to County at least seven (7) days prior to any proposed entry by Developer or Developer’s representatives on the Property. County shall reasonably consider any such request and shall endeavor to provide a response to Developer within three (3) days thereafter. Any such entry shall occur between 6:00 a.m. and 3:00 p.m., Monday-Thursday. County shall have the right, but not the obligation, to accompany Developer during any such additional examinations and/or investigations. As an additional condition of such entry, Developer shall (i) conduct all additional examinations and/or investigations, in a diligent, expeditious, and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after the additional examinations and/or investigations; (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 additional examinations and/or investigations 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 County 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 additional examinations and/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

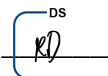
claims liabilities and losses arise out of the intentional misconduct, active negligence, or illegal actions of any of the Indemnitees.

5.2 AS-IS; Release. Developer acknowledges and agrees that Developer is leasing the Property from County 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 COUNTY'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 COUNTY 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.

On and after the Property Closing, Developer will be deemed to have waived and released County 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. 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 

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; (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 5.4 or Section 5.5 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 5.4 and Section 5.5 hereinafter, Developer shall have no indemnity obligation to any of the Indemnitees 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 Property Closing regardless of when such Liabilities may accrue.

5.4 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.

5.5 Obligation to Remediate Premises. Developer acknowledges that, as of the Property Closing, County shall have no 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 County, 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.

5.6 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 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 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 Director, Developer shall furnish to the 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 County facts regarding a violation of law that affects the Property.

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

5.8 Review of Title of Site. Developer acknowledges and agrees that pursuant to the terms of the ENRA, County provided Developer a preliminary title report prepared by the Title Company on September 4, 2020, as its Order No. 0360021681-CA (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, and that Developer, through its Affiliate Mercy, has had ample opportunity pursuant to the terms of the ENRA to review the Preliminary Title Report and Title Exceptions, and has approved the Preliminary Title Report and Title Exceptions and has determined the condition of title to the Property (the “**Condition of Property Title**”) is acceptable to Developer and suitable for Developer’s intended use.

From and after the date of the approved Preliminary Title Report, and continuing until the earlier of (i) the Property Closing, or (ii) termination of this Agreement, County 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), within fifteen (15) days after Developer is notified of or otherwise discovers any such further Title Exceptions. If Developer disapproves, in writing, of such further Title Exceptions, County shall have the option, within five (5) days following receipt of Developer’s disapproval notice, to (i) remove or elect, in writing, to remove, as of the Close of Escrow, such further Title Exceptions, or (ii) take no action with respect to such further Title Exception. If County

fails to timely remove or to affirmatively elect, in writing, to remove such further Title Exception, Developer shall have the option, within five (5) days thereafter, to terminate this Agreement. Developer's failure to so terminate this agreement shall constitute Developer's election to proceed with this transaction, subject to such further Title Exception.

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) Take-Out Loan. The Take-Out Loan;
- (d) HHC Loan. A loan of funds from the Housing for a Healthy California Program in an amount to be set forth in the Final Project Budget;
- (e) AHSC Loan. A loan of funds from the Affordable Housing and Sustainable Communities Program in an amount to be set forth in the Final Project Budget;
- (f) County Loan. A loan of funds from the County in an amount to be set forth in the Final Project Budget, and as more particularly provided in Section 6.2 below; and
- (g) HACSM Loan. A loan of funds from HACSM, including the funds already loaned through the Predevelopment Agreement, in an amount to be set forth in the Final Project Budget, and as more particularly provided in Section 6.2 below.

Notwithstanding the foregoing, (i) Developer shall continue to use commercially reasonable efforts to pursue additional sources of funds that may be available to assist with the costs of developing the Project; and (ii) the Project Financing above may be changed upon the mutual agreement of Developer and County.

6.2 County Loan; HACSM Loan. Each of the County Loan and HACSM Loan will be provided to Developer as a result of funding awards made independently from this Agreement. Each of said loans shall be evidenced and provided pursuant to County's standard loan documents for awards of affordable housing funds.

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 County 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 County 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 County and reviewed by County 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 County Regulatory Agreement, should County 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, County 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 a Sources and Uses of Funds Statement; the Final Project Budget will include, as a condition to County'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 as of the Effective Date that 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 County for review and approval. Upon County'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 County 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, Developer shall submit to the 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 County 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 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 County, Developer hereby agrees to provide and pay to County and, to the extent of remaining proceeds, to HACSM, towards repayment of the County Loan and 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 County 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 County Loan, the HACSM Loan, the Take-Out Loan, the equity raised by the sale of the Tax Credits, and, to the extent applicable, the HHC Loan, and the AHSC 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 County Loan, the HACSM Loan, the Take-Out Loan, the equity raised by the sale of the Tax Credits, and, to the extent applicable, the HHC Loan, and the AHSC 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 County Loan and HACSM Loan. Subject to the requirements of TCAC and other lenders providing loans to the Project that have been approved by County, 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 County and allocated and credited, as and when paid, as a principal payment on (i) the County Loan, and if after said allocation there are remaining Cost Savings, (ii) the HACSM Loan. Any Cost Savings above and beyond the amount needed to fully repay the County Loan and 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 County and, if applicable, 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 County's issuance of a Release of Construction Covenants.

7. GROUND LEASE OF PROPERTY

7.1 Agreement. County, 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 County 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 County's Benefit. County's obligation to ground lease the Property to Developer shall be subject to satisfaction of all of the following conditions precedent or County's written waiver of such conditions precedent in its sole and absolute discretion:

(a) Organizational Documents. The 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 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 County of the names and addresses of all persons and entities that have a beneficial interest in Developer.

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

(c) Evidence of Project Financing. The 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 Director. County hereby approves James E. Roberts-Obayashi Corp. as the General Contractor.

(e) Construction Contract. County 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 Director shall have approved said Construction Contract.

(f) Final Construction Documents. County shall have approved the Final Construction Documents for the Project and County 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 County 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 County 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 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) Management Plan. Developer shall have submitted a comprehensive management plan for the Project to the Director in accordance with Section 7 of the County Regulatory Agreement and the Director shall have reasonably approved the same.

(l) Management Agreement. Developer shall have submitted an executed agreement by and between Developer and Mercy Housing Management Group, a Nebraska nonprofit corporation, or another property manager approved by County for management of the Project (the “**Management Agreement**”), which Management Agreement shall be consistent with this Agreement and the requirements of Section 7 of County Regulatory Agreement, and the Director shall have reasonably approved the same.

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

(n) 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 County of any default under the instrument creating the lien (the “**Request for Notice**”).

(o) Documents Executed. Developer shall have duly executed the Ground Lease, Memorandum of Ground Lease, and County Regulatory Agreement, with signatures acknowledged (as applicable) and deposited them into Escrow.

(p) Title Policy. If requested by County, Title Company is prepared to issue an owner’s policy of title insurance naming County as the insured, showing Developer as holding leasehold title to the Property and insuring the County Regulatory Agreement to be a valid lien on the Property subject only to exceptions approved by County (the “**County Title Policy**”).

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

(r) Total Project Cost. Nothing shall have come to the attention of Developer and/or County 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 Director, of the availability of funding sources other than County to complete the Project. If Developer becomes aware of any such information, Developer shall promptly give notice thereof to County.

(s) Updated Appraisal. Developer and County shall have obtained an updated appraisal of the fair market value of the Property, dated not more than nine (9) months prior to the date of the Property Closing.

(t) Childcare Center; Community Serving-Uses; Community Garden. Developer shall have submitted to the Director a proposed program for each of the childcare center and community serving uses, consistent with the requirements of the RFP, and a community garden, to address the concerns of community stakeholders, as

discussed during the community meetings held by Mercy prior to the Effective Date, and the Director shall have reasonably approved the same.

(u) 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 Director, County shall have received a certificate to that effect signed by Developer.

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

(b) 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.

(c) Total Project Cost. Nothing shall have come to the attention of Developer and/or County 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 Director, of the availability of funding sources other than County to complete the Project.

(d) 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.

(e) 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 amount of the Take-Out 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 County with a copy of the Developer Title Policy.

(f) Updated Appraisal. Developer and County shall have obtained an updated appraisal of the fair market value of the Property, dated not more than nine (9) months prior to the date of the Property Closing.

(g) No Default. No Event of Default by County 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 County.

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 County.

7.5 County 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 County, then County, 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 County's benefit only and the 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 County.

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 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) County Regulatory Agreement;
- (iii) the Construction Loan Security Documents;
- (iv) the Request for Notice;
- (v) one or more (as applicable) County/Lender Subordination Agreements; and

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

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

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

(ii) County Title Policy;

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

(i) a conformed copy of each of the Memorandum of Ground Lease and the County Regulatory Agreement; 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 County to Developer by the Ground Lease, (b) the Escrow fee, (c) the premium for the County 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 County 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. County represents and warrants to Developer that County has not engaged any broker, agent, or finder in connection with this Agreement, and County 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 County.

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 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 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 Director or legal counsel to County 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 County 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 County 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 County 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 Developer shall hold regular progress meetings with County to coordinate the preparation of, submission to, and review of drawings, plans and related documents by County. The staff of County and Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to County can receive prompt and speedy consideration. County shall approve, conditionally approve, or deny, in writing, any formally submitted plans within thirty (30) days after submission to County.

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

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

(a) If County determines that any 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 material changes in the construction plans after their approval by County, Developer shall submit the proposed material change to County for approval. Developer acknowledges and agrees that any proposed changes to the design of, and/or ingress/egress to and from the childcare center are material. 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, County shall approve the proposed change in writing within thirty (30) days after submission to County.

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 County), 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) a claim, demand or cause of action that any person has or asserts against Developer; (iii) 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 (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 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 the 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 Ten Million Dollars (\$10,000,000); (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) products and completed operations; (ii) independent contractors; (iii) Owner's broad form property damage; (iv) severability of interest; (v) cross liability; and (vi) 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. Notwithstanding the foregoing, if prior to the Property Closing Developer provides evidence reasonably satisfactory to County that the Ten Million Dollar \$10,000,000 general aggregate limits in this section will result in commercially unreasonable Project costs, County and Developer shall meet and confer regarding potential options that will not result in an unreasonable risk to County, as determined by County in County's sole and absolute discretion, including, without limitation, a reduction in the limit to a level that will reduce such insurance coverage to a financially feasible level.

(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 County 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 County 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 the 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) County issues a final certificate of occupancy, and (ii) County 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. County 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 Section 10.6(a) and Section 10.6(e).

(d) Commencing on the date County 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 the 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. County 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 County 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 County. 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 Director. Not later than the Effective Date, Developer shall provide the 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 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 Director due to unique circumstances.

(iii) Developer agrees that the provisions of this Section shall not be construed as limiting in any way County'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 County 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, County may at its sole option, obtain such insurance and invoice Developer for the amount of said premium. Exercise of the remedy set forth herein, however, is an alternative to other remedies County 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. County shall cooperate with Developer, at no expense to County, 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 County 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 County shall be those who are so identified in writing by the Director of County.

10.10 Compliance with Laws; Compliance with Prevailing Wage Laws.

(a) Compliance with Laws. Developer shall carry out the construction, development and operation of the Project in conformity with all Governmental Requirements, including without limitation, all applicable state labor standards, County 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 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 County 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 County has not 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 County, 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 County 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, County 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 County. Developer acknowledges and agrees that:

(a) County 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 County in connection with such matters is solely for the protection of County and that neither Developer nor any third party is entitled to rely on it;

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

(c) County 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 County under this Agreement, including any certificate, financial statement, survey, appraisal or insurance policy, County 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 County to anyone.

10.15 Release of Construction Covenants. Promptly after completion of construction of the Project by Developer in conformity with this Agreement, County shall furnish Developer with a Release of Construction Covenants upon written request therefor by Developer. County 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. 8 or such other similar form as to permit it to be recorded in the Official Records. If County refuses or fails to furnish a Release of Construction Covenants for the Project after written request from Developer, County shall, within fifteen (15) days of written request therefor, provide Developer with a written statement of the reasons County refused or failed to furnish the requested Release of Construction Covenants. The statement shall also contain County'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, County shall issue its Release of Construction Covenants upon the posting of cash, a bond, or other security acceptable to County in County's sole discretion by Developer with County 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 County'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.

11. AFFORDABILITY COVENANTS

As more particularly provided in County Regulatory Agreement, for a period of ninety-nine (99) years, fifty-six (i) (56) dwelling units in the Project shall be rented to households whose incomes do not exceed thirty percent (30%) of the area median income for San Mateo, adjusted for household size (the "**Adjusted AMI**"); (ii) fifty-three (53) 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) forty-six (46) 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) twenty-two (22) 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, (a) 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 Director shall have the right, in his or her sole and absolute discretion, to revise the form of County 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; (b) pursuant to Section 4.15 of the County Regulatory Agreement, the Director has the right to permit certain limited increases upon the occurrence of the circumstances specified in said Section 4.15.

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 County. County 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 County in accordance with its terms, and (e) the individuals executing this Agreement on behalf of County are duly authorized to execute and deliver this Agreement on behalf of County. County further represents and warrants that there are no actions, lawsuits, or legal proceedings pending or, to the knowledge of County, threatened, against or affecting County, the adverse outcome of which could have a material adverse effect on County's ability to perform its obligations under this Agreement. As used in this Section 12.3, the phrase "knowledge of County" shall mean and refer to the actual knowledge of the 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 County. Within thirty (30) days after its receipt of written demand from County, Developer shall reimburse County for all costs reasonably incurred by County (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants) in connection with County enforcement of the Project Documents and all related matters, including, without limitation, the following: (a) County'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 County 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:	Mercy Housing California 96, L.P. 1256 Market Street San Francisco, CA 94102 Attn: Kelly Hollywood Email: kelly.hollywood@mercyhousing.org
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with a copy to:	Gubb & Barshay LLP 505 14th Street, Suite 450 Oakland, CA 94612 Attn: Evan Gross, Esq. Email: egross@gubbandbarshay.com
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If to County:	County of San Mateo 264 Harbor Blvd., Building A Belmont, CA 94002-4017 Attn: Director Reference: Middlefield Junction Project Email: bbrigg@smchousing.org
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with a copy to

San Mateo County Counsel's Office
400 County Center, 6th Floor
Redwood City, CA 94063
Attn: Monali Sheth, Esq.
Email: msheth@smcgov.org

and to

Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Attn: Allison LeMoine-Bui, Esq.
Email: alemoine-bui@rutan.com

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 Director, which consent may be withheld in his or her sole and absolute discretion. Any such assignment or delegation without such consent shall, at County's option, be void. Notwithstanding the foregoing, however, (i) 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 County; and (iii) the Partnership may transfer and assign its rights and duties hereunder to Mercy or an Affiliate of Mercy pursuant to the purchase option and/or right of first refusal entered into between Mercy 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 County 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 County'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 County, this Agreement shall be administered and executed on behalf of County by the Director. The 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 County 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 County provided herein, or materially decrease the revenues or other compensation to be received by County hereby. All other waivers or amendments shall require the formal consent of the County Board of Supervisors.

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. With the exception of any loan documents entered into by and between County and Developer with respect to the County Loan, this Agreement contains the entire agreement between County 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. County 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 County, service of process on County shall be made by personal service upon the Director or in such other manner as may be provided by law. In the event that any legal action is commenced by County 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 County.

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 County Officials and Employees. No member, director, officer, employee, or volunteer of County shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by County 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; pandemics; 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 County shall not excuse performance by County); 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 County 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 County has under this Agreement. Except as provided in this Section 17.15, no person or entity other than County, 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 County’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 in this Agreement 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.

“County”

COUNTY OF SAN MATEO, a political subdivision of the State of California

By: _____
Raymond Hodges, Director

“Developer”

MERCY HOUSING CALIFORNIA 96, L.P., a California limited partnership

By: Middlefield Junction LLC, a California limited liability company
Its: General Partner

By: Mercy Housing Calwest, a California nonprofit public benefit corporation
Its: Sole member/manager

By:  _____
Ramie Dare
Vice President

ATTACHMENTS

- 1 - Legal Description of Property
- 2 Site Map
- 3 - Schedule of Performance
- 4 - Scope of Development
- 5 - Preliminary Project Budget
- 6 - Form of Ground Lease
- 7 - Form of County Regulatory Agreement
- 8 - Form of Release of Construction Covenants

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF PROPERTY

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

Parcel One:

Parcel 2, as shown on the certain Map entitled, "Parcel Map No. 1096, Lands of 2700 Middlefield Road", filed in the Office of the County Recorder of San Mateo County, California, on August 14, 2012, in Volume 80 of Parcel Maps, at Pages 38-39.

Parcel Two:

A Non-Exclusive Easement for roadway purposes upon, over, across and along that certain strip of land 45 feet wide, lying Northerly of, and contiguous to, the following three courses of Parcel A, according to Map thereof Recorded April 21, 1980, in Volume 49 of Parcel Maps, Page 51, Records of San Mateo County.

1. South 74° 30' 00" East, 100.37 feet;
2. North 60° 20' 00" East, 98.70 feet;
3. North 30° 00' 00" East, 30.73 feet.

Said Easement is appurtenant to Parcel One above and was created by that certain Deed Recorded on July 30, 1980, in Reel 7975, at Image 1306 (70731-AP) Records of San Mateo County.

Parcel Three:

(a) A Non-Exclusive Easement for private utilities (P.U.E.) within the Northeasterly 5 feet of said Parcel Three.

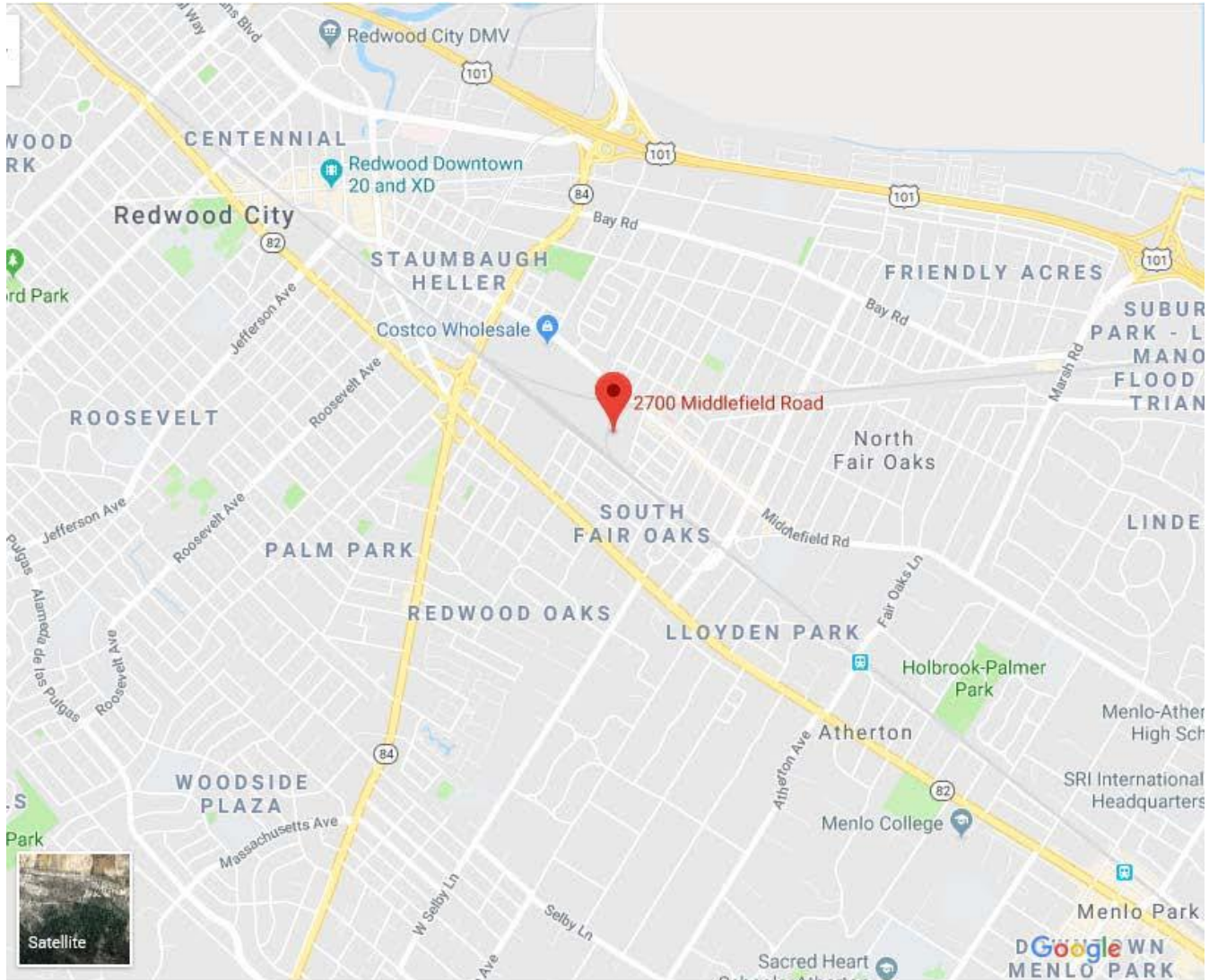
(b) A Non-Exclusive Easement for private utilities within the Southwesterly 5 feet and the Northeasterly 10 feet of said Parcel Four.

Said Easements are appurtenant to and for the benefit of Parcel One above as created by that certain Deed which Recorded September 18, 1987, as Document No. 87144820 of Official Records of San Mateo County, California.

APN: 054-113-140

ATTACHMENT NO. 2

SITE MAP



ATTACHMENT NO. 3

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 Tax Credits and Tax-Exempt Bonds	Next available TCAC round immediately following Developer receives a commitment for the AHSC Loan.
3.	If the first application for Tax Credits is not successful, Developer submits second application for 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 County approval	Within 120 days after receipt of tax credit allocation from TCAC
5.	County approves or disapproves Developer's proposed Final Project Budget	Within 30 days after receipt of Developer's proposed Final Project Budget
6.	Developer revises proposed Final Project Budget, as necessary to obtain County approval.	Within 15 days after any disapproval by County
7	Developer submits to the County and obtains approval of Final Construction Documents	Within 180 days after Developer receives allocation of Tax Credits, but in all events prior to the 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; provided, however, that such date may be extended to the extent the required closing date is extended by CDLAC and/or TCAC.
11.	Developer submits to Director and obtains 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 25 months after commencement.
13.	Developer provides quarterly progress reports to County.	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. 4
SCOPE OF DEVELOPMENT

The proposed project, located at 2700 Middlefield Road, includes the construction of a 179-unit multifamily affordable housing complex. All of the units in the proposed project will be affordable and income-restricted to households earning from 30% to 80% of the Area Median Income (AMI), and 20 of the units will be set aside for persons experiencing homelessness. The project also includes 10,700 sq. ft. of childcare space, 3,019 sq. ft. of residential amenity space, a 2,776 sq. ft. community center, office space, and 156 parking spaces.

ATTACHMENT NO. 5
PRELIMINARY PROJECT BUDGET

[see following page]

SOURCES AND USES

PROJECT NAME:	Middlefield Junction
FINANCE TYPE:	AHSC, HHC, IIG
ADDRESS:	2700 Middlefield Road, Redwood City, CA 94018
HOUSING TYPE:	Family, Formerly Homeless
COUNTY:	San Mateo
SPONSOR:	Mercy Housing California

<u>CONSTRUCTION SOURCES OF FUNDS</u>	Amount	Per Unit	% of TDC
TE Bond-Backed Construction Loan	69,289,917	387,095	49%
Taxable Construction Loan	43,441,972	242,693	31%
Tax Credit Equity	8,843,913	49,407	6%
County of San Mateo	11,287,043	63,056	8%
Expenses Paid at Conversion to Perm	3,081,140	17,213	2%
GP Contributions			
Deferred Dev. Fee	1,170,637	6,540	1%
GP Equity	3,264,367	18,237	2%
TOTAL CONSTRUCTION SOURCES	140,378,989	759,464	100%

<u>PERMANENT SOURCES OF FUNDS</u>	Amount	Per Unit	% of TDC
TE Bond-Backed Amortizing Loan	26,343,468	147,170	19%
Section 8 Backed Mortgage	18,983,546	106,053	14%
Tax Credit Equity	58,959,420	329,382	42%
County of San Mateo	11,287,043	63,056	8%
AHSC	15,500,000	86,592	11%
HHC	4,870,508		
GP Contributions			
Deferred Dev. Fee	1,170,637	6,540	1%
GP Equity	3,264,367	18,237	2%
TOTAL PERMANENT SOURCES	\$ 140,378,989	\$ 784,240	97%

<u>USES OF FUNDS</u>			
Hard Costs	93,997,946	525,128	67.0%
Architectural	2,965,213	16,565	2.1%
Engineering	622,445	3,477	0.4%
Constr. Int and Fees	10,064,324	56,225	7.2%
Permanent Financing	528,270	2,951	0.4%
Legal	300,000	1,676	0.2%
Reserves	2,989,659	16,702	2.1%
Contingencies	16,131,473	90,120	11.5%
Other Costs	5,837,554	32,612	4.2%
Developer Costs	6,842,105	38,224	4.9%
Syndication	100,000	559	0.1%
TOTAL USES	140,378,990	784,240	100.0%

ATTACHMENT NO. 6

GROUND LEASE

[See following document]

GROUND LEASE

By and Between

COUNTY OF SAN MATEO

“Landlord”

and

MERCY HOUSING CALIFORNIA 96, L.P.

“Tenant”

Dated as of _____

ATTACHMENT NO. 6

GROUND LEASE

This **GROUND LEASE** ("**Ground Lease**") dated as of _____ ("**Effective Date**"), is entered into by and between **COUNTY OF SAN MATEO**, a political subdivision of the State of California ("**Landlord**"), and **MERCY HOUSING CALIFORNIA 96, L.P.**, a California limited partnership ("**Tenant**").

RECITALS

A. Landlord owns fee title to that certain real property located at 2700 Middlefield Road, Redwood City, in unincorporated 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**").

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

C. Landlord entered into an Affordable Housing and Property Disposition Agreement with Tenant, dated as of _____, 2021 ("**Agreement**").

D. The Agreement provides for Landlord to ground lease the Property to Tenant, and for Tenant to (i) construct and operate a one hundred seventy-nine (179) unit multifamily apartment project with all but two (2) of such units restricted for occupancy by extremely low, very low, and low income households, (ii) construct and operate or provide for the operation of, a community serving space and office space, and (iii) construction and provide for the operation of a childcare facility (the "**Project**").

E. 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 seventy-nine (179) 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" has the meaning set forth in Recital C.

"Annual Project Revenue" has the meaning set forth in the Regulatory Agreement.

"Approved Financing" means the financing approved by Landlord pursuant to the Agreement, and as set forth in the Final 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 County for the Project.

“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 anticipated 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.

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

“Director” means the person duly appointed to the position of Director of Landlord, or his or her designee. The 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 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 of California, the County, 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_____ is 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.

“Landlord and HACSM and Landlord and HACSM Personnel” means Landlord, HACSM, 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 seventy-Nine (179) residential dwelling units, a community-serving use, and a childcare facility, 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.

“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 “County,” 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 August 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; and
- (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 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 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 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 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 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 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 Tenant's sole cost and expense and submitted to Landlord 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 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), 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 fifty percent (50%) 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 and HACSM all amounts owed on the County Note and HACSM Note, respectively. 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 political subdivision of the State of California, 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 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 seventy-seven (177) 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, an owner's policy of title insurance, 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 political subdivision of the State of California. 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, 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. As used in this Section, the terms "alterations" and "improvements" shall not apply to repairs of existing improvements.

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 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 Ten Million Dollars (\$10,000,000.00); (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) products and completed operations; (II) independent contractors; (III) Owner’s broad form property damage; (IV) severability of interest; (V) cross liability; and (VI) 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 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 County of San Mateo 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 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 Section 9.2 and Section 9.6.

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 HACSM and Landlord and HACSM 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 HACSM and Landlord and HACSM 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 Director. Not later than the Effective Date, Tenant shall provide the 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 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 Director due to unique circumstances.
- (C) The 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 HACSM and Landlord and HACSM 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 HACSM and Landlord and HACSM 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 three (3) business 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 Landlord or HACSM, 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 Landlord's 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.

Except for directional signage during construction and for signage required by law, 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 Director first had and obtained, which consent may be withheld in the 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 HACSM and Landlord and HACSM 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 HACSM and Landlord and HACSM 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; (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 15.4 or Section 15.5 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 15.4 and Section 15.5 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 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.

15.5 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 "County'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.

15.6 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 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 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 Director, Tenant shall furnish to the 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 income-qualified 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:

(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 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

ATTACHMENT NO. 6

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 and/or HACSM'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; epidemics or pandemics; 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: Mercy Housing California 96, L.P.
 1256 Market Street
 San Francisco, CA 94102
 Attn: Kelly Hollywood
 Email: kelly.hollywood@mercyhousing.org

with a copy Gubb & Barshay LLP
to: 505 14th Street, Suite 450
 Oakland, CA 94612
 Attn: Evan Gross, Esq.
 Email: egross@gubbandbarshay.com

If to Landlord: County of San Mateo
 264 Harbor Blvd., Building A
 Belmont, CA 94002-4017
 Attn: Director
 Reference: Middlefield Junction Project
 Email: bbriggs@smcgov.org

with a copy San Mateo County Counsel's Office
to 400 County Center, 6th Floor
 Redwood City, CA 94063
 Attn: Monali Sheth, Esq
 Email: msheth@smcgov.org

and to Rutan & Tucker, LLP
 18575 Jamboree Road, 9th Floor
 Irvine, CA 92612
 Attn: Allison LeMoine-Bui, Esq.
 Email: alemoine-bui@rutan.com

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.

ATTACHMENT NO. 6

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 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 for the rights and remedies granted herein to HACSM, and as may otherwise 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 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”

COUNTY OF SAN MATEO, a political subdivision of the State of California

Date:_____, 20__

By: _____
Raymond Hodges, Director

“Tenant”

MERCY HOUSING CALIFORNIA 96, L.P., a California limited partnership

By: Middlefield Junction LLC,
a California limited liability company
Its: General Partner

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation
Its: Sole member/manager

Date:_____, 20__

By: _____
Ramie Dare
Vice President

ATTACHMENT NO. 6

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

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

Parcel One:

Parcel 2, as shown on the certain Map entitled, "Parcel Map No. 1096, Lands of 2700 Middlefield Road", filed in the Office of the County Recorder of San Mateo County, California, on August 14, 2012, in Volume 80 of Parcel Maps, at Pages 38-39.

Parcel Two:

A Non-Exclusive Easement for roadway purposes upon, over, across and along that certain strip of land 45 feet wide, lying Northerly of, and contiguous to, the following three courses of Parcel A, according to Map thereof Recorded April 21, 1980, in Volume 49 of Parcel Maps, Page 51, Records of San Mateo County.

1. South 74° 30' 00" East, 100.37 feet;
2. North 60° 20' 00" East, 98.70 feet;
3. North 30° 00' 00" East, 30.73 feet.

Said Easement is appurtenant to Parcel One above and was created by that certain Deed Recorded on July 30, 1980, in Reel 7975, at Image 1306 (70731-AP) Records of San Mateo County.

Parcel Three:

(a) A Non-Exclusive Easement for private utilities (P.U.E.) within the Northeasterly 5 feet of said Parcel Three.

(b) A Non-Exclusive Easement for private utilities within the Southwesterly 5 feet and the Northeasterly 10 feet of said Parcel Four.

Said Easements are appurtenant to and for the benefit of Parcel One above as created by that certain Deed which Recorded September 18, 1987, as Document No. 87144820 of Official Records of San Mateo County, California.

APN: 054-113-140

EXHIBIT “B”

MEMORANDUM OF LEASE

(See following document)

ATTACHMENT NO. 6

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 **COUNTY OF SAN MATEO**, a political subdivision of the State of California ("**Landlord**"), and **MERCY HOUSING CALIFORNIA 96, 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 one hundred seventy-nine (179) unit affordable multifamily apartment project, to be made available long term at an affordable housing cost, a community serving space, office space, and a childcare facility (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”

COUNTY OF SAN MATEO, a political subdivision of the
State of California

Date: _____,
20__

By: _____
Raymond Hodges, Director

“Tenant”

MERCY HOUSING CALIFORNIA 96, L.P., a California
limited partnership

By: Middlefield Junction LLC,
a California limited liability company
Its: General Partner

By: Mercy Housing Calwest,
a California nonprofit public benefit
corporation
Its: Sole member/manager

Date: _____, 20__

By: _____
Ramie Dare
Vice President

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. 6

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

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

Parcel One:

Parcel 2, as shown on the certain Map entitled, "Parcel Map No. 1096, Lands of 2700 Middlefield Road", filed in the Office of the County Recorder of San Mateo County, California, on August 14, 2012, in Volume 80 of Parcel Maps, at Pages 38-39.

Parcel Two:

A Non-Exclusive Easement for roadway purposes upon, over, across and along that certain strip of land 45 feet wide, lying Northerly of, and contiguous to, the following three courses of Parcel A, according to Map thereof Recorded April 21, 1980, in Volume 49 of Parcel Maps, Page 51, Records of San Mateo County.

1. South 74° 30' 00" East, 100.37 feet;
2. North 60° 20' 00" East, 98.70 feet;
3. North 30° 00' 00" East, 30.73 feet.

Said Easement is appurtenant to Parcel One above and was created by that certain Deed Recorded on July 30, 1980, in Reel 7975, at Image 1306 (70731-AP) Records of San Mateo County.

Parcel Three:

(a) A Non-Exclusive Easement for private utilities (P.U.E.) within the Northeasterly 5 feet of said Parcel Three.

(b) A Non-Exclusive Easement for private utilities within the Southwesterly 5 feet and the Northeasterly 10 feet of said Parcel Four.

Said Easements are appurtenant to and for the benefit of Parcel One above as created by that certain Deed which Recorded September 18, 1987, as Document No. 87144820 of Official Records of San Mateo County, California.

APN: 054-113-140

ATTACHMENT NO. 7
COUNTY REGULATORY AGREEMENT

[See following document]

REQUESTED BY
AND WHEN RECORDED MAIL TO:

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 **COUNTY OF SAN MATEO**, a political subdivision of the State of California, (the “**County**”), and **MERCY HOUSING CALIFORNIA 96, L.P.**, a California limited partnership (the “**Developer**”). County 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. County owns fee title to that certain real property located at 2700 Middlefield Road, Redwood City, in unincorporated County of San Mateo, State of California more particularly described in Exhibit “A” and depicted in Exhibit “B”, both of which exhibits are attached hereto and incorporated herein by this reference (the “**Property**”).
- B. Developer is controlled by an experienced owner, developer and manager of affordable housing for low and moderate-income families.
- C. County entered into an Affordable Housing and Property Disposition Agreement with Developer, dated as of _____, 2021 (“**Agreement**”).
- D. The Agreement provides for County to ground lease the Property to Developer, and for Developer to construct and operate a one hundred seventy-nine (179) unit multifamily apartment project with all but two (2) of such units restricted for occupancy by low, very low, and extremely low income households, a community serving space and office space, and a childcare facility (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 fifty-six (56) Affordable Units that are required to be rented to and occupied by 30% AMI Extremely Low Income Households, with the following unit mix:

twenty (20) one (1) bedroom; one (1) bathroom
twenty-two (22) two (2) bedroom; one (1) bathroom
fourteen (14) three (3) bedroom; two (2) bathroom

“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 fifty-three (53) Affordable Units that are required to be rented to and occupied by 50% AMI Very Low Income Households, with the following unit mix:

eleven (11) one (1) bedroom; one (1) bathroom
twenty-eight (28) two (2) bedroom; one (1) bathroom
fourteen (14) three (3) bedrooms; 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 forty-six (46) Affordable Units that are required to be rented to and occupied by 60% AMI Low Income Households, with the following unit mix:

eleven (11) one (1) bedroom; one (1) bathroom
Eighteen (18) two (2) bedroom; one (1) bathroom
sixteen (16) three (3) 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 twenty-two (22) 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
ten (10) two (2) bedroom; one (1) bathroom
six (6) three (3) 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 seventy-seven (177) rental units in the Project:

- (i) forty-eight (48), one (1) bedroom, one (1) bath units;
- (ii) seventy-nine (79), two (2) bedroom, one (1) bath units; and
- (iii) fifty (50), three (3) 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 HACSM.

“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 County pursuant to the Agreement, as set forth in the Final Project Budget attached to 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 County.

“Approved Pro Forma” means that certain pro forma created in connection with the Final Project Budget attached to 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 funded from annual deposits of Five Hundred Dollars (\$500) per Unit (e.g., \$89,500) of Annual Project Revenue, 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 County for the completion of construction of the Project.

“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 anticipated amount of _____ Dollars (\$_____).

“County” means the County of San Mateo, a political subdivision of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

“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 Mercy Housing California 96, L.P., a California limited partnership, and any permitted assignees of Developer.

“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.*

“Director” means the person duly appointed to the position of Director of County, or his or her designee. The Director shall represent County in all matters pertaining to this Regulatory Agreement. Whenever a reference is made herein to an action or approval to be undertaken by County, the 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, and any other political subdivision, agency, instrumentality, or other entity exercising jurisdiction over County, Developer, the Project, or the Property, including common law.

“Ground Lease” means that certain Ground Lease entered into by and between County 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.

“County and HACSM and County and HACSM Personnel” means County, HACSM and all of their respective officers, officials, directors, members, employees, agents, and representatives.

“HAP Contract” means a Housing Assistance Payments contract entered into by and between Developer and HACSM.

“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 and the other public agency Project funding sources, that a preference be given to tenants who are currently residents of the County and/or currently work in the County. County shall have approved the Marketing Plan, in its reasonable discretion, as one of County’s conditions to the Property Closing. The Marketing Plan is further discussed in Section 4.03 hereof.

“Mercy” means Mercy Housing California, 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 County 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 County 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 County; (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 Eighty-Nine Thousand Five Hundred Dollars (\$89,500) (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 County) (the **"Target Amount"**) set aside in a separate interest-bearing trust account, commencing upon the rental of the Affordable Units, and (ii) replenished, as necessary, from annual deposits of Annual Project Revenue, to the extent available, such that the balance of the Operating Reserve does not fall below the Target Amount. 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 seventy-nine (179) residential dwelling units, a community serving space and office space, and a childcare facility, and all required on-site improvements necessary to serve all of the foregoing.

“Property” means that certain real property (i) consisting of approximately three and two tenths (3.2) acres, (ii) located in unincorporated County of San Mateo, (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.

“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. 8 and incorporated therein by reference.

“Scope of Development” means that certain Scope of Development which is attached to the Agreement as Attachment No. 4 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. 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 Director shall have the right, in his or her sole and absolute discretion, to revise the form of County 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 County’s prior written consent, which consent may be given or withheld in County’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. The Marketing Plan shall require that Developer conduct the following outreach prior to completion of construction: (i) advertisement of the Project and the Affordable Units in a newspaper of general circulation in San Mateo County, and (ii) outreach and marketing activities typically used by Mercy or limited partnerships in which Mercy is the managing general partner with respect to initial lease-up of affordable units in new affordable housing developments, including available units, if any, for which a specified target population will receive a preference. 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) Except for the Affordable Units that will be designated for formerly homeless or homeless households (the “**Homeless Units**”), the initial lease-up of the Affordable Units shall be done pursuant to a lottery system. The lease up of the Homeless Units will be done in accordance with the requirements of the County Loan and/or any HCD financing, as applicable. The Marketing Plan shall include procedures for conducting the lottery. A representative of County may, but shall not be obligated to, attend the lottery. Notwithstanding anything in this Agreement to the contrary, none of Developer or Mercy, 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 4.05 and 4.07 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. The requirements of this subsection (c) shall not apply to the Homeless Units.

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.

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; and seven (7) persons in a three (3) 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 County 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 County. Developer shall maintain in its records each Income Computation and Certification Form (or alternate documentation as permitted by the following sentence) obtained pursuant to this section for a minimum of five (5) years. In lieu of utilizing the Income Computation and Certification Form and taking the steps outlined above in this Section 4.06, Developer may elect to follow the income verification process required by TCAC.

4.07 Rental Priority. Subject to all applicable Governmental Requirements, and any funding obtained by Developer to operate and/or develop the Project that has been approved by County, during the term of this Regulatory Agreement, Developer shall use its reasonable commercial efforts to lease the Affordable Units to Eligible Tenants who live and/or work in the County of San Mateo.

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, unless such increase will violate the Tax Credit Rules or another public agency Project regulatory agreement.

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 County in writing of such occurrence, and shall inform County 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 July 31 following the date County issues a Release of Construction Covenants for the Project, Developer shall annually advise County 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 County 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 County 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.

(a) 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 or provide a rent credit to 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 County.

(b) 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 County shall have for such default, Developer, for each separate violation, shall be required to pay to County 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 County 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.

(c) 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 County shall have for such default, Developer, for each separate violation, shall be required to pay County 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 COUNTY 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 COUNTY AND ACCOMPLISHMENT OF COUNTY'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 COUNTY'S REMEDY FOR SUCH DEFAULT TO SUCH A DAMAGES REMEDY AND IN THAT REGARD COUNTY MAY DECLARE A DEFAULT UNDER THE TERMS OF THE GROUND LEASE, THE AGREEMENT, OR OTHER AGREEMENTS ENTERED INTO BY AND BETWEEN COUNTY 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:

COUNTY'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 County 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, County 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.

In the event that due to no fault of Developer, (i) Developer is unable to secure and enter into a HAP Contract or to renew a HAP Contract, or (ii) any such HAP Contract or renewal HAP Contract is reduced, terminated, or not renewed, the income and rent restrictions applicable to the 30% AMI Extremely Low Income Units affected by such reduction, termination or nonrenewal (the "**Affected Affordable Units**") may be increased to the extent necessary for the Project to operate at a debt-service coverage ratio of 1:1.15, as reasonably determined by County, and the maximum rent for any such Affected Affordable Units shall be increased to the rent appropriate for such Affected Affordable Units as published by TCAC regulations; provided, however, that such increases shall be permitted to continue only until Developer has secured a substantially similar rental subsidy.

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 County'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 County. 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 County for review and approval. A complete and true copy of the results of such background evaluation shall be provided to County. Approval of a Property Manager by County shall not be unreasonably withheld or delayed and shall be in County's reasonable discretion, and County 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 County, which approval shall not be unreasonably delayed, and shall be in County's reasonable discretion. The selection by Developer of any new Property Manager also shall be subject to the foregoing requirements. County hereby approves Mercy Housing Management Group as the initial Property Manager.

7.02 Management Plan. Prior to and as one of County's conditions to the Property Closing under the Agreement, Developer shall have prepared and submitted to the 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 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 Director proposed amendments to the Management Plan, which are also subject to the prior written approval of the Director.

7.03 Social Services. Prior to and as one of County's conditions to the Property Closing under the Agreement, Developer shall have prepared and submitted to the 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 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 County. County shall respond to any such proposed changes within thirty (30) days after submittal to County 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, County 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 County. If such condition(s) acts, or inactions of gross mismanagement do persist beyond such period, County 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 County'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 County 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 County Inspections. County and County's, 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 County 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 County 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 County, 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 County 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 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 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 County (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 Five Hundred Dollars (\$500) per unit per year, provided any changes to the amount deposited into the Capital Replacement Reserve will require County 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 Director explaining the requested amendment and reasons therefor; the Director shall reasonably review and approve (or

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disapprove) each request for an amendment to an approved Annual Budget. The 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 Director 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 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 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 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 County 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 August 1 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, County 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 Director. The 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, County may request additional financial analysis or obtain a third party review at County's own expense, of financial statements for the Project to verify the accuracy of the rental payments by Developer under the Ground Lease, 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 County 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 County evidence reasonably satisfactory to County of compliance herewith.

SECTION 12. EFFECT OF VIOLATION OF THE TERMS AND PROVISIONS OF THIS REGULATORY AGREEMENT AFTER COMPLETION OF CONSTRUCTION.

County 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 County has been, remains or is an owner of any land or interest therein in the Property or in the Project. County 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, and (ii) all rules and regulations of any assessment district 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 County and HACSM and County and HACSM 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 County and HACSM and County and HACSM 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, or (iii) any Liabilities incurred under any Governmental Requirements relating to the acts described in the foregoing clauses (i) and (ii).

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 County and HACSM and County and HACSM Personnel pursuant to Section 13.02, and provided no Hazardous Materials exist on the Property as a result of County'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 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 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 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 Director, Developer shall furnish to the 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 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) products and completed operations; (ii) independent contractors; (iii) Owner's broad form property damage; (iv) severability of interest; (v) cross liability; and (vi) 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 County 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 County 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 the 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 County 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. County 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 County 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 the 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. County 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 County 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 Section 14.01 and Section 14.05.

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 County and HACSM and County and HACSM 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 County and HACSM and County and HACSM 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 County. 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 Director. Not later than the Effective, Developer shall provide the 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 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 Director due to unique circumstances.

(c) The 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 County'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 County), assume all responsibility for and hold County and HACSM and County and HACSM 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 Director, which consent may be withheld in his or her sole and absolute discretion. Any such assignment or delegation without such consent shall, at County'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 Mercy or an Affiliate of Mercy pursuant to the right of first refusal or purchase option entered into between Mercy 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 County. 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 County'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 County'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 County hereunder. County 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 County. 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 County may, at County'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 County, service of process on County shall be made by personal service upon the Director or in such other manner as may be provided by law. In the event that any legal action is commenced by County 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.

17.01 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: Mercy Housing California 96, L.P.
 1256 Market Street
 San Francisco, CA 94102
 Attn: Kelly Hollywood
 Email: kelly.hollywood@mercyhousing.org

with a copy to: Gubb & Barshay LLP
 505 14th Street, Suite 450
 Oakland, CA 94612
 Attn: Evan Gross, Esq.
 Email: egross@gubbandbarshay.com

If to County: County of San Mateo
 264 Harbor Blvd., Building A
 Belmont, CA 94002-4017
 Attn: Director
 Reference: Middlefield Junction Project
 Email: bbriggs@smcgov.org

with a copy to Monali Sheth, Esq.
 San Mateo County Counsel's Office
 400 County Center, 6th Floor
 Redwood City, CA 94063
 Email: msheth@smcgov.org

and to Rutan & Tucker, LLP
 18575 Jamboree Road, 9th Floor
 Irvine, CA 92612
 Email: alemoine-bui@rutan.com
 Attention: Allison LeMoine-Bui, Esq.

17.02 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 County which shall not excuse performance by County); 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 County 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.

17.03 Relationship Between County and Developer. It is hereby acknowledged by Developer that the relationship between County and Developer is not that of a partnership or joint venture and that County 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, County 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 County from any claim made against County arising from a claimed relationship of partnership or joint venture between County 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 County or its designated agents or employees.

17.04 No Third Party Rights. Except for the rights and remedies granted herein to HACSM, 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.

17.05 County Approvals and Actions. This Regulatory Agreement shall be administered and executed on behalf of County by the Director. The 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 County 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 County provided herein, or materially decrease the revenues or other compensation to be received by County hereby. All other waivers or amendments shall require the formal consent of the Board of Directors of County.

17.06 Counterparts. This Regulatory Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

17.07 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.

17.08 Real Estate Brokerage Commission. County 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.

17.09 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.

17.10 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.

17.11 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.

17.12 No Waiver. All waivers of the provisions of this Regulatory Agreement must be in writing by the appropriate authorities of Developer and County. 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.

17.13 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.

17.14 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.

17.15 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.

17.16 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.

17.17 Time of Essence. Time is expressly made of the essence with respect to the performance by County and Developer of each and every obligation and condition of this Regulatory Agreement.

17.18 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.

17.19 Non-Liability of Officials and Employees of County. No member, director, officer, employee, or volunteer of County shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by County 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 County and HACSM and County and HACSM Personnel with respect to any Default or breach by County 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.

“County”

COUNTY OF SAN MATEO, a political
subdivision of the State of California

Date: _____

By: _____
Raymond Hodges, Director

“Developer”

MERCY HOUSING CALIFORNIA 96, L.P., a
California limited partnership

By: Middlefield Junction LLC, a
California limited liability company
Its: General Partner

By: Mercy Housing Calwest, a
California nonprofit public
benefit corporation
Its: Sole member/manager

Date: _____

By: _____
Ramie Dare
Vice President

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
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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

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

Parcel One:

Parcel 2, as shown on the certain Map entitled, "Parcel Map No. 1096, Lands of 2700 Middlefield Road", filed in the Office of the County Recorder of San Mateo County, California, on August 14, 2012, in Volume 80 of Parcel Maps, at Pages 38-39.

Parcel Two:

A Non-Exclusive Easement for roadway purposes upon, over, across and along that certain strip of land 45 feet wide, lying Northerly of, and contiguous to, the following three courses of Parcel A, according to Map thereof Recorded April 21, 1980, in Volume 49 of Parcel Maps, Page 51, Records of San Mateo County.

1. South 74° 30' 00" East, 100.37 feet;
2. North 60° 20' 00" East, 98.70 feet;
3. North 30° 00' 00" East, 30.73 feet.

Said Easement is appurtenant to Parcel One above and was created by that certain Deed Recorded on July 30, 1980, in Reel 7975, at Image 1306 (70731-AP) Records of San Mateo County.

Parcel Three:

(a) A Non-Exclusive Easement for private utilities (P.U.E.) within the Northeasterly 5 feet of said Parcel Three.

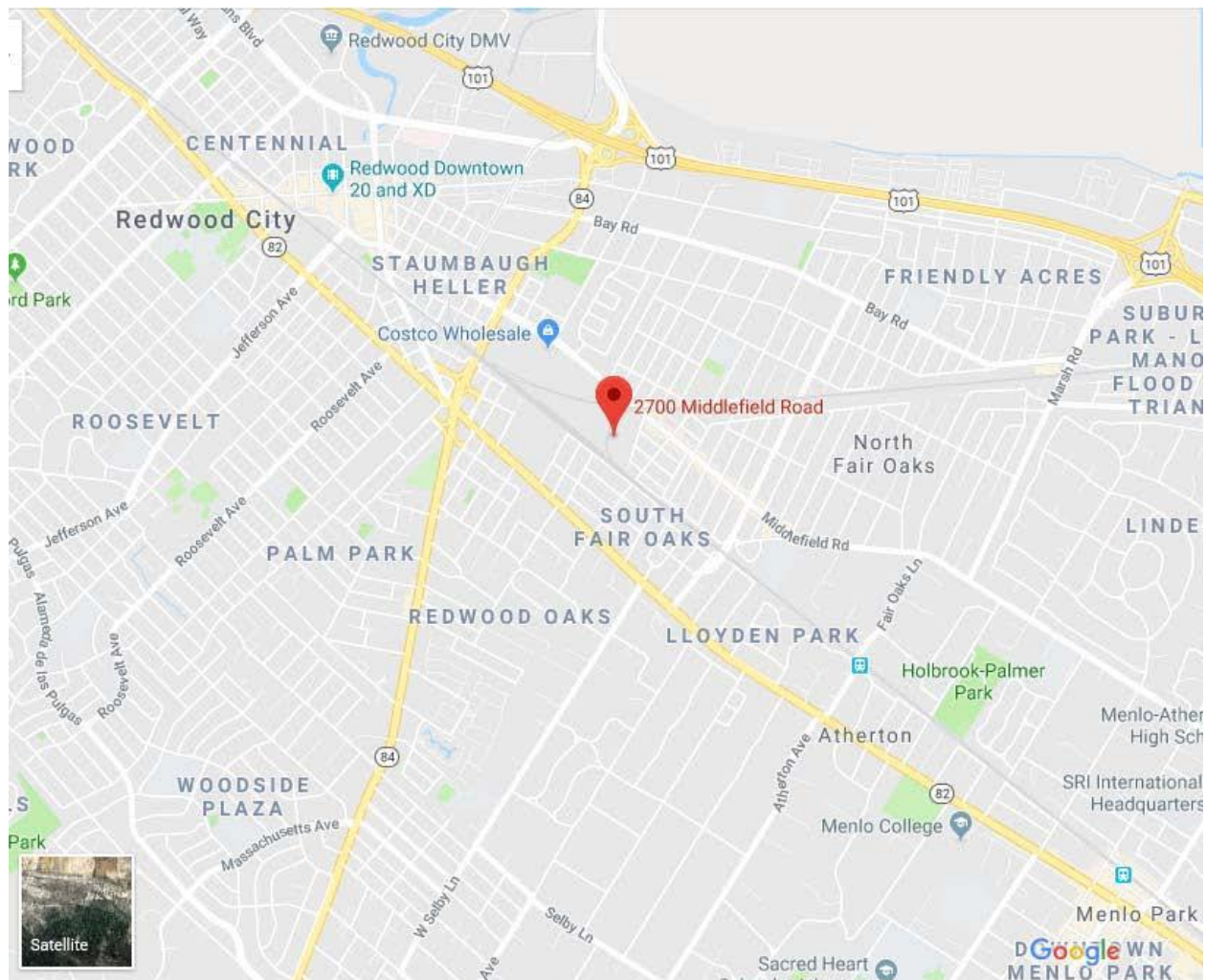
(b) A Non-Exclusive Easement for private utilities within the Southwesterly 5 feet and the Northeasterly 10 feet of said Parcel Four.

Said Easements are appurtenant to and for the benefit of Parcel One above as created by that certain Deed which Recorded September 18, 1987, as Document No. 87144820 of Official Records of San Mateo County, California.

APN: 054-113-140

EXHIBIT "B"

MAP



ATTACHMENT NO. 7

EXHIBIT "C"

INCOME COMPUTATION AND CERTIFICATION FORM

(See following document)

ATTACHMENT NO. 7

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

ATTACHMENT NO. 7

-1-

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

ATTACHMENT NO. 7

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
- _____ 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. 7

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 _____
 Redwood 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 County of San Mateo ("County") 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 Landlord 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 County 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)

ATTACHMENT NO. 7

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 County 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. 8
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 COUNTY OF SAN MATEO, a political subdivision of the State of California ("County"), in favor of MERCY HOUSING CALIFORNIA 96, 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 at 2700 Middlefield Road, Redwood City, in unincorporated County of San Mateo, State of California, more particularly described in the legal description attached hereto as Exhibit "A" ("Property").

B. On or about _____, County and Developer entered into that certain Affordable Housing and Property Disposition Agreement ("Agreement") which provides for Developer to develop on the Property a _____ (____) unit rental affordable housing development, as more particularly described therein as the "Project."

C. Pursuant to the Agreement, County is required to furnish Developer with this Release upon request by Developer after completion of construction of the Project.

D. The issuance by County 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, County 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 County 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, County has executed this Release as of the date set forth above.

COUNTY OF SAN MATEO, a political
subdivision of the State of California

By: _____
Raymond Hodges, Director

Date: _____

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

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

Parcel One:

Parcel 2, as shown on the certain Map entitled, "Parcel Map No. 1096, Lands of 2700 Middlefield Road", filed in the Office of the County Recorder of San Mateo County, California, on August 14, 2012, in Volume 80 of Parcel Maps, at Pages 38-39.

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1. South 74° 30' 00" East, 100.37 feet;
2. North 60° 20' 00" East, 98.70 feet;
3. North 30° 00' 00" East, 30.73 feet.

Said Easement is appurtenant to Parcel One above and was created by that certain Deed Recorded on July 30, 1980, in Reel 7975, at Image 1306 (70731-AP) Records of San Mateo County.

Parcel Three:

(a) A Non-Exclusive Easement for private utilities (P.U.E.) within the Northeasterly 5 feet of said Parcel Three.

(b) A Non-Exclusive Easement for private utilities within the Southwesterly 5 feet and the Northeasterly 10 feet of said Parcel Four.

Said Easements are appurtenant to and for the benefit of Parcel One above as created by that certain Deed which Recorded September 18, 1987, as Document No. 87144820 of Official Records of San Mateo County, California.

APN: 054-113-140

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