

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: October 29, 2020
Reviewed by: NA

SUBJECT: Disposition and Development Agreement (DDA) & Categorical Exemption Pursuant to the California Environmental Quality Act (CEQA) Guidelines with Satellite Affordable Housing Associates (SAHA) for Real Property Located at 755 Cleveland Avenue

REPORT BY: Anne Hersch, AICP, Planning Manager
Justin Fried, AICP, Transportation Planner
Jeff Bond, AICP, Community Development Director

SUMMARY

City staff has worked with Satellite Affordable Housing Associates (SAHA) for the past two years on negotiations to develop a City owned parcel for an affordable housing project. The Albany Family Housing Development will be located at the northeast corner of Cleveland Avenue and Washington Avenue and will include 62 units of 100% affordable housing. The property is owned by the City of Albany and will be developed by SAHA.

STAFF RECOMMENDATION

That the Council:

1. Conduct a public hearing on the Disposition and Development Agreement (DDA); and
2. Adopt Resolution No. 2020-103 finding that the Satellite Affordable Housing Associates 62-Unit affordable housing development located at 755 Cleveland Avenue is exempt from the requirements of the California Environmental Quality Act (CEQA) Under a Class 32 Categorical Exemption; and
3. Adopt Resolution No. 2020-104 Authorizing the City Manager to execute the Disposition and Development Agreement (DDA) between Satellite Affordable Housing Associates (SAHA) and the City of Albany for the development of the Albany Family Housing Project located at 755 Cleveland Avenue and approving findings pursuant to Section 33433 of the California Health and Safety Code

BACKGROUND

In June 2011, the City of Albany purchased a 4.5 acre parcel on Pierce Street, formerly a Caltrans right-of-way for Interstate 80 access ramps. The City purchased the site using the City's redevelopment agency funds. At the time of purchase, the site was envisioned to be a municipal complex that would include a park, pedestrian/bike trail, and new maintenance center. A planning process was initiated in 2012 and included the master plan for the Pierce Street Park. Plans for a maintenance center were eventually abandoned due to cost. The Peggy Thomsen Pierce Street Park project was completed and opened to the public in 2017.

Albany 2035 General Plan

When the property was owned and used as right-of-way for Caltrans, City zoning designations and General Plan land use classifications had not been assigned to the parcel. As part of the General Plan update process completed in 2016, General Plan Land Use Designations were assigned. The southwestern portion of the property was assigned a General Plan Land Use Classification of R-3 High Density Residential to be continuous with existing residential uses on Washington Ave. The Park portion of the property received a designation as OS-Open Space.



Image 1. General Plan Land Use Map

Zoning Establishment

To bring the Zoning Map into compliance with the General Plan, in 2019, the City Council adopted Ordinance No. 2019-06 which established zoning land use classifications for the parcel. This action included a PF-Public Facilities zoning designation for the 3.32 acres

Pierce Street Park and an R-3 “High Density Residential” Zoning designation for the approximately 1.13 acres. Currently, the City owns the entire 4.5 acre parcel.

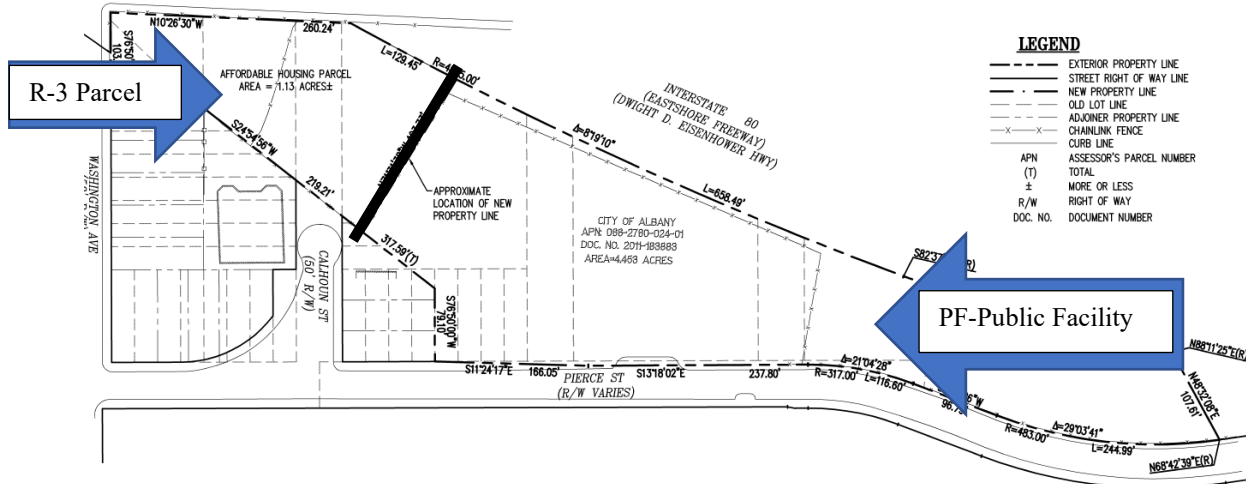


Image 2. Subject Map

Satellite Affordable Housing Associates

Satellite Housing (Satellite) was founded in 1966 with a mission to provide affordable, service-enriched housing that promotes healthy and dignified living for people with limited options. Satellite merged with Affordable Housing Associates (AHA) in July 2012, establishing Satellite Affordable Housing Associates (SAHA), and currently provides more than 4,000 residents in seven counties in northern California with affordable housing and on-going support services.

In fall 2017, SAHA reached out to City staff to explore the feasibility of the subject site to be developed as an affordable housing project. SAHA staff concluded that the site could accommodate a mid-rise affordable housing project and expressed interest in pursuing a project jointly with the City.

Exclusive Negotiating Agreement (ENA)

In June 2018, the City Council provided direction to staff to initiate efforts to work with Satellite Affordable Housing Associates (SAHA) to prepare a draft Exclusive Negotiating Agreement (ENA) and develop a term sheet for an affordable housing project at the northeast corner of Cleveland Avenue and Washington Avenue. The draft ENA was presented to City Council on September 17, 2018. At that time, the Council adopted Resolution 2018-113 authorizing the City Manager to execute the ENA between the City of Albany and Satellite

Affordable Housing Associates. This original agreement was for an initial term of 1 year with the City Manager authorized to allow up to two six month extensions. A Third extension was approved by the City Council on September 8, 2020, authorizing the City Manager to extend the ENA for an additional six month period to March 10, 2021. During the negotiating period, staff met with the City Council in closed session on several occasions to receive negotiating direction.

Public Engagement

As part of the term sheet executed with the ENA, SAHA voluntarily agreed to host to two public workshops at the Albany Community Center to present the project and get community input. The first workshop was held on May 23, 2019 and provided preliminary schematics of the project. The second workshop was held on August 28, 2019 and more developed plans were presented to the public. Both meetings were well attended, and the project was generally well received. The project that is incorporated into the Disposition and Development Agreement is consistent with the preliminary plans presented in the workshops.

ANALYSIS

The proposed project is a 62 unit affordable housing development that will provide family housing. The unit mix includes studio, one bedroom, two bedroom, and three bedroom apartments. The building is proposed to be four stories with podium parking. The project density is 55 units per acre.

The building is cut into the sloped site to effectively minimize the building massing and hide the parking podium below grade. The podium will be lined by three residences, the main entry lobby, management office and bike room on Cleveland Avenue. Care has been taken to locate access to the parking, trash, and utilities to prevent conflict. The building activates Washington Avenue with apartments at the courtyard level, corner residence, stepping planters, and secure resident entry to the podium courtyard from Washington Avenue.

The building will have a maximum height of 52 feet. The project will have 64 interior bicycle parking spaces and 62 interior vehicle parking spaces. The project will include 2,767 square feet of common areas and a patio/courtyard of 6,823 square feet. Total gross building area is estimated at 93,249 square feet.

A unit mix and anticipated qualifying household income was provided by the applicant and is included in the table below. The qualifying household income is subject to change based on project financing and project costs. The DDA limits the qualifying income to 80% of area median income or less. Each agency providing grant funding has their individual requirements, which is expected to ultimately push the qualifying income to lower income households.

Number of Units by Number of Bedrooms

Qualifying Household Income	Studio	1	2	3	Total
20% of Area Median Income	2	6	3	2	13
50% of Area Median Income		11	9	8	28
60% of Area Median Income		6	7	7	20
Manager			1		1
Total	2	23	20	17	62

Table 1. Albany Family Housing Unit Mix and Affordability Level



Image 2. View facing northeast

SB 35 Planning Approval

SAHA filed a Planning Application on October 21, 2019 for the project. The project application includes:

- Design Review for a new 62 unit building
- Tentative Parcel Map separating the subject from Pierce Street Park and creating a resultant parcel consistent with the site zoning and General Plan Land Use Map.

- Density Bonus and related waivers for:
 - o Floor Area Ratio
 - o Lot Coverage
 - o Building Height
 - o Front Yard Setback
 - o Front Yard Encroachment

The planning review process is subject to the requirements of Senate Bill 35 (Chapter 366, Statutes of 2017), which mandates a streamlined ministerial (e.g., staff) approval process for developments that include a specified level of affordability, be on an infill site, comply with existing residential and mixed use general plan or zoning provisions, and comply with other requirements such as locational and demolition restrictions. The intent of the legislation is to facilitate and expedite the construction of housing.

SB 35 does not allow for public notice and public hearings on qualifying projects. In addition, it limits the City's ability to impose conditions of approval to adopted objective standards. Pursuant to SB 35, the project request was reviewed and approved within the required 60-day period. A Notice of Action approving the project entitlements was issued on December 16, 2019.

Due Diligence and Technical Studies

City staff and SAHA staff have met on nearly a weekly basis during the period of exclusive negotiations to work through a wide range of due diligence items and negotiations associated with the preparation of a draft Disposition and Development Agreement (DDA). Among the due diligence items, SAHA submitted and City staff have reviewed an analysis that due to current and prior disturbance within and around the project site and consequent lack of suitable native substrates/habitats, the proposed project would not result in any impacts to any federally listed plants and animals. In addition, SAHA submitted analysis that the proposed would not add substantial automobile trips to nearby intersections, and traffic operations at nearby intersections are therefore expected to remain similar without and with the project.

One of the unique considerations with the project site is its location near the Union Pacific Railroad and Interstate 80. As part of the planning for the project, SAHA commissioned analyses of the methods needed to ensure that construction of the project will comply with City of Albany General Plan standards for interior noise, as well as with Federal Transit Administration requirements for minimizing ground-borne vibrations, and California Building Code requirements for sound transmission. Similarly, SAHA documented the methods needed be used to ensure that construction of the proposed project will include a HVAC system designed to reduce particulates to a level such that 70-year outdoor exposure of roadway source emissions at the project site would not result in the exposure of future residents to a risk level that would exceed the criterion of significance for cancer health effects.

DISPOSITION AND DEVELOPMENT AGREEMENT

As part of the negotiating process, staff has worked with external legal counsel and SAHA representatives to finalize a Disposition and Development Agreement (DDA). A DDA is a contract between a developer and the City that involves the sale of City-owned land to the developer and identifies terms and responsibilities for the project construction. Key highlights of the Agreement are detailed below.

Ground Lease Rent and Corresponding City Loan

The overall objective of the DDLA is to provide the site to SAHA at nominal cost in order that they can focus financial resources on construction of a high quality project and maximize the affordability of the housing. Although the objective is straightforward, the structure of the agreements to implement the agreement is complex. Section 3 of the DDA has been drafted to provide that SAHA will pre-pay to the City the 99-year ground lease in full, in an amount of approximately \$4.65 million. Simultaneously, the City will provide SAHA an interest-free loan of approximately \$4.65 million at the time of their payment. The net effect is that no funds will change hands. SAHA agrees to repay the loan in the future out of residual receipts, net of other loan payments and operating expenses. This arrangement is advantageous to SAHA in pursuing other grant and loan funds. It also is advantageous to the City because it allows the City to use project lending mechanisms such as a deed of trust to further enforce affordability requirements.

Art in Public Places

Section 6.21 of the proposed agreement addresses the City's Art in Public Places Program requirements. As a result of the ministerial planning approval process mandated by SB 35, the project was not subject to the Art in Public Places requirement that is normally triggered by the City's conventional discretionary planning and design review process. In addition, voluntary full compliance with the Art in Public Places requirement would present a financial hardship towards project goals of maximizing the affordability of the housing. SAHA, however, has agreed to expend not less than \$35,000 for the design and construction of a public art feature to be included as part of the project.

All-Electric Construction

One of the key strategies in the City's Climate Action Plan is to electrify new buildings in the City. By using all-electric appliances, combined with maximizing use of renewable sources of electricity, the City can further reduce greenhouse gas emissions and advance towards the City's goal of carbon neutrality. Section 6.22 of the proposed agreement addresses all-electric construction. This section establishes that SAHA agrees to utilize all-electric fixtures, equipment, and appliances. Actual design of mechanical and electrical systems will occur during the upcoming building permit phase of the project. This section of the agreement also provides that the City must review and approve any exception if for some reason compliance is not feasible.

Development Schedule

One of the key sources of financial subsidy for the project are Low Income Housing Tax Credits granted pursuant to the Internal Revenue Code and California Revenue and Taxation Code. These tax credits are allocated by the California Tax Credit Allocation Committee (TCAC), and will be awarded to SAHA based on application to TCAC. SAHA then “sells” right to use the tax credits to a private investor with income tax liability. The proceeds from the sale are used to construct the project.

Tax credits are awarded based on a competitive scoring system. The proposed agreement requires SAHA to submit a timely application for tax credits, and to receive a tax credit award by September 30, 2023. If the tax credit applications are unsuccessful, and an agreement cannot be reached on an alternative financing arrangement, the proposed Agreement may be terminated.

Bike Path

The General Plan Transportation Element and the Albany Active Transportation Plan include a Class I shared-use path through the subject property as part of the Pierce Street Path alignment. To accommodate this path connection, the agreement includes a Bicycle Path Easement establishing public access through the site connecting from Peggy Thomsen Pierce Street Park to Cleveland Avenue. Furthermore, to simplify construction and minimize future disruption to the subject property, the agreement includes construction of the trail improvements on the subject property by the Developer in exchange for a grant of \$25,000 from the City.

33433 Report

California Health and Safety Code Section 33433 requires that if the property was acquired by the City with redevelopment agency funds, the sale or lease shall be approved by the legislative body by resolution after public hearing. The requirement for a public hearing includes unique public notice requirements and submission of a summary report describing the key terms of the agreement and demonstrating that the less than fair market lease is justified due to the requirements to provide affordable housing.

The following information shall be included in the summary report:

- The cost of the agreement to the agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the agency, plus the expected interest on any loans or bonds to finance the agreements.
- The estimated value of the interest to be conveyed or leased, determined at the highest and best uses permitted under the plan.
- The estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants, and development costs required by the sale or lease. The purchase price or present value of the lease payments which the lessor will be required to make during the term of the lease. If the sale price or total rental

amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use consistent with the redevelopment plan, then the agency shall provide as part of the summary an explanation of the reasons for the difference.

- An explanation of why the sale or lease of the property will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation.

Staff worked with Seifel Consulting on the preparation of the 33433 report. The final draft was published on Friday, October 16, 2020 and is contained as Attachment 3 to the staff report.

California Environmental Quality Act Compliance

City Council action on the DDA is defined as a “project” under the California Environmental Quality Act (CEQA), and thus potentially subject to environmental review. CEQA Guidelines Section 15332, however, exempts from further environmental review infill development projects that meet certain criteria. Staff has prepared the attached Notice of Exemption, which provides the documentation that the project meets the criteria for the exemption, and thus no further environmental review is required. City Council action on Resolution 2020-103 would document the approval of the Categorical Exemption.

FINANCIAL CONSIDERATIONS

Opportunities for project funding are available through Federal, State, and County programs. Based on previous City Council actions, city staff has worked with SAHA staff on joint grant applications for project funding and will continue to do so in the future. Most grant applications require a Resolution of Support from the City Council and staff will continue to bring grant applications to Council for review and support.

To date, one federal grant has been awarded to the City providing nearly \$2.7 million of funding. Two other applications are currently pending.

Grant Name	Source	Govt.	Amount	Awarded	Reapply
HOME	HUD	Federal	\$2,698,857	Yes	N/A
A1	Alameda County	County	\$2.3 million	TBD	N/A
IIG	HCD	State of California	\$2.7 million	No	Yes
TOD	HCD	State of California	\$5 million	TBD	N/A

Table 2. Albany Family Housing Grant Applications

SAHA and the City will reapply for the IIG grant in the fall. A new resolution of support will be brought back to City Council in Winter 2021.

Implementation of the project is expected to require a significant amount of staff time, particularly in the Community Development Department and Public Works Department. In addition, technical consulting and legal services may be required. Any expenditure of funds for professional services will be paid out of the City's adopted operating budget appropriation.

SUSTAINABILITY CONSIDERATIONS

The future development of 755 Cleveland Avenue for affordable housing will provide a long-term housing product that is compliant with the CALGreen Code requirements. Although not currently mandated by the California Building Code, the DDA includes provisions for the project to be developed with all electric fixtures, equipment, and appliances.

SOCIAL EQUITY CONSIDERATIONS

The future development of Albany Family Housing will provide new affordable housing opportunities in the City of Albany. SAHA is required under state and Federal fair housing laws to ensure the project is available to all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by state and federal fair law.

CITY COUNCIL STRATEGIC PLAN INITIATIVE

Supporting the infill infrastructure grant supports the following policies and objectives from the Strategic Plan:

- Goal 1 Foster a Healthy & Sustainable Urban Village
 - Objective 2 Promote Housing Availability & Quality,
 - Workplan Item 2. Development of Affordable Housing Project at Cleveland and Washington Avenues in Partnership with SAHA.

ATTACHMENTS

1. **Resolution No. 2020-103** determining that the project is Categorically Exempt from CEQA pursuant to Section 15332 "In-Fill Development Projects" with Exhibit A Notice of Exemption
2. **Resolution No. 2020-104** adoption of the Disposition and Development Agreement for the Albany Family Housing Project between Satellite Affordable Housing Associates and the City of Albany
 - Attachment A: Revised Land Disposition, Development and Funding Agreement
 - Exhibit A-1: Legal Description of the Property
 - Exhibit A-2: Conceptual Site Plan
 - Exhibit B: Schedule of Performance

- Exhibit C: Approved Financing Plan
- Exhibit D: Form of Ground Lease
- Exhibit E: Form of Regulatory Agreement
- Exhibit F: Form of Promissory Note
- Exhibit G: Form of Leasehold Deed of Trust
- Exhibit H: Memorandum of DDLA
- Exhibit I: Memorandum of Ground Lease
- Exhibit J: Form of Residual Receipts Report
- Exhibit K: Form of Certificate of Completion
- Exhibit L: Form of Notice of Affordability Restriction
- Exhibit M: Form of Bicycle Path Easement
- Exhibit N: Bike Trail Improvements Path Detail
- Exhibit O: Form of Utility Easements

3. 33433 Report

4. Timeline of Key Dates

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RESOLUTION NO. 2020-103

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**A RESOLUTION OF THE ALBANY CITY COUNCIL FINDING THAT
THE SATELLITE AFFORDABLE HOUSING ASSOCIATES 62-UNIT
AFFORDABLE HOUSING DEVELOPMENT LOCATED AT 755
CLEVELAND AVENUE IS EXEMPT FROM THE REQUIREMENTS OF
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT UNDER A
CLASS 32 CATEGORICAL EXEMPTION**

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WHEREAS, the City of Albany has drafted Disposition and Development Agreement for the development of a 62-unit multi-family affordable housing project at 755 Cleveland Avenue; and

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WHEREAS, the proposed affordable housing project is defined as a “project” under the California Environmental Quality Act (CEQA); and

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WHEREAS, CEQA Guidelines Section 15332 “In-Fill Development Projects” exempts from further environmental review infill development projects that meet certain criteria; and

WHEREAS, a public hearing notice was published in the West County Times and posted in three public places pursuant to California Government Code Section 65090 on October 15, 2020 and October 29, 2020 for the public hearing held on October 29, 2020; and

WHEREAS, the Albany City Council held a duly noticed public hearing on the Proposed Land Development and Disposition Agreement on October 29, 2020; and

WHEREAS, the City Council held a public hearing and considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request; and

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WHEREAS, the City Council has reviewed the attached Notice of Exemption, all written and oral comments and the written responses thereto, and, based on the independent judgment of the Council, finds that the Categorical Exemption is appropriate to comply fully with the requirements of the California Environmental Quality Act.

NOW THEREFORE, BE IT RESOLVED, that the Albany City Council finds that the Satellite Affordable Housing Associates 62-unit affordable housing development is exempt from the requirements of the California Environmental Quality Act under a Class 32 Categorical Exemption.

NICK PILCH, MAYOR

Attachment: Exhibit A – Notice of Exemption

Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: City of Albany
1000 San Pablo Avenue
Albany, CA 94706

County Clerk
County of Alameda

Project Title: Satellite Affordable Housing Associates 62-unit Affordable Housing Development

Project Location - Specific: 755 Cleveland Avenue

Project Location - City: Albany

Project Location - County: Alameda

Description of Nature, Purpose, and Beneficiaries of Project:

The proposed project is the construction of a four-story 62-unit multi-family affordable housing development. The project developer is Satellite Affordable Housing Associates. The proposed project is an L-shaped building with a courtyard on the east side of the parcel. The main entrance to the project is on Cleveland Avenue. The building is cut into the sloped site to effectively minimize the building massing and hide the parking podium below grade. The podium will be lined by three residences, the main entry lobby, management office and bike room on Cleveland Avenue. The building will have a maximum height of 52 feet. The project will have 64 interior bicycle parking spaces and 62 interior vehicle parking space. The project will include 2,767 square feet of common areas and a patio/courtyard of 6,823 square feet. Total gross building area is estimated at 93,249 square feet.

The subject site was a portion of the Interstate 80 right-of-way until reconstruction of the freeway interchange in the late 1990s. The City of Albany acquired the property in 2011. The 1.13 acre parcel is on Cleveland Avenue north of Washington Avenue. The property is located just east of the of the I-80/I580 freeway and the Union Pacific railroad tracks. The property is located at the foot of the “East Shore/Solano Hill” neighborhood and adjacent to the new Peggy Thomsen Pierce Street Park. The site is currently unimproved. For the past several years, the site has been used as an off-site construction laydown area for contractors upgrading the City’s sewer system.

Name of Public Agency Approving Project: City of Albany

Name of Person or Agency Carrying Out Project: Albany Community Development Dept

Exempt Status: *(check one)*

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Class 32 – CEQA Guidelines Section 15332 (Infill Development Projects);
- Statutory Exemptions. State code number:

Reasons why project is exempt:

The proposed project is consistent with the requirements of the California Environmental Quality Act Class 32 categorical exemption for in-fill development as follows:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

Explanation: The property has a General Plan Land Use classification of High Density Residential and has a zoning designation of R-3: Residential High Density.

- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

Explanation: The site is 1.13 acres in size and is located within the city limits of the City of Albany and is surrounded by urban uses including the I-80 freeway and Union Pacific railroad to the west, Peggy Thomsen neighborhood park to the north, and a mix of single-family and multi-family housing to the east and to the south.

- (c) The project site has no value as habitat for endangered, rare or threatened species.

Explanation: The project site was until the late 1990s a freeway offramp. As part of the demolition of the freeway off-ramp, the site was heavily graded. For the past several years, the site has been used as an off-site construction laydown area for contractors upgrading the City's sewer system. The project developer has submitted analysis that due to current and prior disturbance within and around the project site and consequent lack of suitable native substrates/habitats, the proposed project would not result in any impacts to any federally listed plants and animals.

- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Explanation: The proposed project is consistent with local and regional transportation plans and programs. Construction of the project will include construction of a segment of a planned off-street bicycle facility that will link Pierce Street from the north to Buchanan Street and Bay Trail bicycle facilities to the south and southwest. The project developer has submitted analysis that the proposed would not add substantial automobile trips to nearby intersections, and traffic operations at nearby intersections are therefore expected to remain similar without and with the project.

As part of the planning for the project, the developer has submitted documentation of the methods to be used to ensure that construction of the project will comply with City of Albany General Plan standards for interior noise, as well as with Federal Transit Administration requirements for minimizing ground-borne vibrations, and California Building Code requirements for sound transmission.

As part of the planning for the project, the developer has submitted documentation of the methods to be used to ensure that construction of the proposed project will include a HVAC system designed

to reduce particulates of to a level such that 70-year outdoor exposure of roadway source emissions at the project site would not result in the exposure of future residents to a risk level that would exceed the criterion of significance for cancer health effects. In addition, construction of the site will be subject to all relevant Bay Area Air Quality Management District construction requirements.

The nearest surface water bodies to the project site are Cerrito Creek to the north and Codornices Creek to the South, both approximately 2,900 feet from the project site, and the San Francisco Bay, which is located approximately 600 feet to the west. As part of the City's building permit process, the City will require compliance with the California Regional Water Quality Control Board - San Francisco Bay Region - Municipal Regional Stormwater NPDES Permit. include appropriate source control, site design, and stormwater treatment measures through the implementation of low impact development techniques.

(e) The site can be adequately served by all required utilities and public services.

Explanation: All required utilities exist in nearby city right-of-way, and no major off-site improvements are required for the proposed development.

Streamlined Ministerial Approval Process

In addition to compliance with Class 32 categorical exemption criteria, the California Environmental Quality Act does not apply to the proposed project as a result of Senate Bill 35 (Chapter 366, Statutes of 2017), which mandates a streamlined ministerial approval process. Specifically, SB 35 requires the availability of a Streamlined Ministerial Approval Process for developments that include a specified level of affordability, be on an infill site, comply with existing residential and mixed use general plan or zoning provisions, and comply with other requirements such as locational and demolition restrictions. The intent of the legislation is to facilitate and expedite the construction of housing.

Lead Agency Contact Person: Contact for categorical exemption: Jeff Bond 510-528-5769.
Contact for project design and construction: Anne Hersch, 510-528-5765.

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: _____ Title: Community Development Director

- . X Signed by Lead Agency
 - . Signed by Applicant
- Date received for filing at OPR: _____

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RESOLUTION NO. 2020-104

A RESOLUTION OF THE ALBANY CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN SATELLITE AFFORDABLE HOUSING ASSOCIATES (SAHA) AND THE CITY OF ALBANY FOR THE DEVELOPMENT OF THE ALBANY FAMILY HOUSING PROJECT LOCATED AT 755 CLEVELAND AVENUE AND APPROVING FINDINGS PURSUANT TO SECTION 33433 OF THE CALIFORNIA HEALTH AND SAFETY CODE

WHEREAS, the City of Albany (“the City”) purchased a 4.5 acre parcel on Pierce Street from Caltrans using redevelopment funds in June 2011; and

WHEREAS, a master plan was prepared for the subject site and 3.32 acres of the property was developed as Pierce Street Park; and

WHEREAS, the Albany 2035 General adopted on April 18, 2016 included an General Plan Land Use Designation of “High Density Residential” for the 1.13 acre portion of the site that is located at the northeast corner of Cleveland Avenue and Washington Avenue on the subject site; and

WHEREAS, in September 2017, Satellite Affordable Housing Associates (“SAHA”) engaged with City staff to explore the feasibility of an affordable housing development on the subject site; and

WHEREAS, the Albany City Council provided direction in June 2018 for staff to work with SAHA to prepare an Exclusive Negotiating Agreement (“ENA”) and develop a term sheet for an affordable housing project at the northeast corner of Cleveland Avenue and Washington Avenue; and

WHEREAS, the City Council adopted Resolution No. 2018-113 on September 18, 2018 authorizing the City Manager to execute the Exclusive Negotiating Agreement; and

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2 **WHEREAS**, three ENA extensions have been granted allowing SAHA and City staff to
3 continue to negotiate the terms of the DDA; and
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5 **WHEREAS**, the Albany City Council adopted Ordinance No. 2019-06 on June 4, 2019
6 establishing a Zoning Classification of R-3 “Residential High Density” for the portion of the site
7 that is proposed to be developed for Albany Family Housing; and
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9 **WHEREAS**, SAHA filed a Planning Application with the City for project entitlements
10 including Design Review, Density Bonus, and a Tentative Parcel Map pursuant SB 35 on October
11 21, 2019; and
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13 **WHEREAS**, project entitlements for the Albany Family Housing Project were approved on
14 December 16, 2019; and
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16 **WHEREAS**, City staff, legal counsel, and SAHA representatives diligently negotiated the
17 terms and conditions of the DDA as well as preparing supporting exhibits; and
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19 **WHEREAS**, the terms of the development and loan agreement reached by SAHA and the
20 City are reflected in the proposed DDA; and
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22 **WHEREAS**, California Health and Safety Code Section 33433 requires that if a former
23 redevelopment agency wishes to sell or lease property to which it holds title and if that property
24 was acquired in whole or in part with property tax increment funds, the sale or lease shall first be
25 approved by the legislative body by resolution after public hearing; and
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27 **WHEREAS**, City staff retained the services of Seifel Consulting to prepare the 33433 report
28 for the project; and
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LAND DISPOSITION, DEVELOPMENT AND FUNDING AGREEMENT

BY AND BETWEEN

THE CITY OF ALBANY;

and

SATELLITE AFFORDABLE HOUSING ASSOCIATES;

Dated as of October 29, 2020

This document maybe subject to change prior to public hearing.

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LAND DISPOSITION, DEVELOPMENT AND FUNDING AGREEMENT
Albany Family Housing

This Land Disposition, Development and Funding Agreement is entered into as of October , 2020 (the "Effective Date"), by and between the City of Albany, a California charter city (the "City"), and Satellite Affordable Housing Associates, a California nonprofit public benefit corporation (the "Developer") with reference to the following facts, understandings and intentions of the Parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The City is the fee owner of 1.13 acres of certain real property located on the corner of Cleveland Avenue and Washington Street, in the City, as more fully described on Exhibit A (the "Property").

C. The City desires the Developer to construct the Development. Pursuant to the terms of this Agreement, the Developer will own and operate the Improvements on the Property, as multi-family rental housing (with related facilities) to be made available to and occupied by extremely-low, very-low and low income households up to 80% Area Median Income. Pursuant to the terms of this Agreement, the City will lease the Property to the Developer for such purpose. The City will retain ownership of the fee simple interest in the Property.

D. The Developer intends to finance the costs of developing the Development with sources that include, but are not limited to, the City Loan, a County A1 Loan, Tax Credit Funds, and private lender construction and permanent financing. This Agreement shall govern the disbursement of the City Loan for the development costs associated with the Development.

E. The City has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests, and will materially contribute to the implementation of, the City's vision to create a vibrant economy and sustainable system of high-quality education, community health, public safety, housing, recreation, arts, culture and infrastructure and the timely construction of the Development.

F. The amount of the City Loan provided pursuant to this Agreement does not exceed the amount of City assistance necessary to make the Developer's acquisition of the leasehold interest in the Property and the construction and operation of the Development, as restricted by this Agreement, financially feasible.

G. Pursuant to the CEQA and its implementing guidelines, the Development is eligible for streamlined, ministerial approval pursuant to Government Code Section 65913.4, and is therefore exempt from review under the California Environmental Quality Act ("CEQA")

pursuant to Public Resources Code Section 21080(b)(1), which states the general rule that CEQA does not apply to ministerial projects.

THEREFORE, for and consideration of the foregoing recitals which are hereby incorporated into this Agreement by this reference, and for other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the City and the Developer hereby agree as follows:

ARTICLE 1.
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Agreement" means this Land Disposition, Development and Funding Agreement, including the attached Exhibits and all subsequent Operating Memoranda and amendments to this Agreement.

(b) "Annual Operating Expenses" with respect to a particular calendar year means the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles:

- (i) Property taxes and assessments imposed on the Development;
- (ii) Debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans associated with the development or operation of the Development and approved by the City in the Approved Financing Plan;
- (iii) Property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry, and pursuant to a management contract approved by the City;
- (iv) Premiums for property damage and liability insurance;
- (v) Any annual license or Certificate of Completion fees required for operation of the Development;
- (vi) Security services;
- (vii) Advertising and marketing costs;
- (viii) Cash deposited into reserves for capital replacements of the Development in an amount to be approved by the City as part of the Approved Financing Plan, as the same may increase during the Term with the approval of the City pursuant to Section 4.5;

(ix) Cash deposited into an operating reserve in an amount to be approved by the City as part of the Approved Financing Plan, as the same may increase during the Term with the approval of the City pursuant to Section 4.5, and annual operating budgets, but with the operating reserve capped at six (6) months of gross rent from the Development (as such rent may vary from time to time);

(x) Partnership management fee and, for the first fifteen (15) years of the Term, and an asset management fee, in the amount approved by the City as part of the Approved Financing Plan;

(xi) Utility services not paid for directly by tenants, including without limitation, water, sewer, and trash collection;

(xii) maintenance and repair, including pest control, landscaping, grounds maintenance, painting and decorating, cleaning, common systems repair, janitorial supplies and services,

(xiii) Social services fees and expenses;

(xiv) Annual audit fees, inspection fees, or monitoring fees required in relation to any Approved Financing;

(xv) Extraordinary operating costs specifically approved by the City in its reasonable discretion; and

(xvi) Payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves,

(xvii) Reasonable accounting fees and legal fees; and

(xviii) Payment of Deferred Developer Fee, in an amount approved in writing by the City at its reasonable discretion;

(xix) Other ordinary and reasonable operating expenses approved in writing by the City at its reasonable discretion and not listed above.

(xx) Annual Operating Expenses shall exclude the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

(c) "Approved Financing" means the loans, grants, and other financing to be secured by the Developer, and approved by the City for the purpose of financing the costs of the Development which shall be consistent with the Approved Financing Plan.

(d) "Approved Financing Plan" means the Financing Plan approved by the City as of the date of this Agreement, attached to this Agreement as Exhibit C, as the same may be amended pursuant to Section 4.5.

(e) "Assignment Agreement" means the Assignment of Collateral Documents pursuant to which the Developer assigns to the City its rights and obligations with respect to certain agreements, Plans and Specifications, and approvals, executed by the Developer as a precondition to the making of the City Loan.

(f) "Bike Trail Improvements" means the bike trail and site preparation defined in the attached Exhibit N.

(g) "Capitalized Rent Component" means that portion of the City Loan, in the approximate amount of Four Million Six Hundred and Fifty Thousand Dollars (\$4,650,000) to be disbursed to the Developer, subject to the disbursement conditions set forth in Section 3.6 of this Agreement.

(h) "CEQA" means The California Environmental Quality Act, California Public Resources Code §21000- §21177, as amended.

(i) "Certificate of Completion" means the final Certificate of Completion issued by the City on the Completion of Construction of the Improvements. The form of Certificate of Completion is attached hereto as Exhibit K.

(j) "City" means City of Albany, a California charter city.

(k) "City Council" means the City Council of the City of Albany.

(l) "City Documents" shall mean, collectively, this Agreement, the Ground Lease, the Promissory Note, the Leasehold Deed of Trust, the Regulatory Agreement, the Notice of Affordability Restrictions, and all other documents required to be executed by the Developer in connection with the Development.

(m) "City Event of Default" has the meaning set forth in Section 9.2, below.

(n) "City Grant" has the meaning set forth in Section 3.13 below.

(o) "City Manager" means the City's Chief Executive Officer.

(p) "City Loan" has the meaning set forth in Section 3.1, below.

(q) "City's Prorata Share of Lender's Share of Residual Receipts" means, as determined at the Close of Escrow, the percentage resulting from dividing the City Loan funds disbursed to the Developer in accordance with the Agreement by the sum of such City Loan funds and any additional subordinate lender loan funds disbursed to the Developer in accordance with the applicable agreements.

(r) "Close of Escrow" means the date of recording of the Memorandum of DDA, Memorandum of Ground Lease, Leasehold Deed of Trust against the Developer's interest in the Property.

(s) "Collateral" means and includes all right, title, interest, claims and demands of the Developer in and to the Collateral Documents, including contract rights and general intangibles, now existing or hereafter arising; and all amendments, substitutions for, and proceeds thereof, including, without limitation, insurance and similar payments.

(t) "Collateral Documents" means the Developer's right, title and interest to all project agreements, including but not limited to development reports, all contracts, architect's agreements, engineer's agreements, management agreements, and all other contracts and agreements which concern the development and/or operation of the Development, all Governmental Approvals (including but not limited to all permits and licenses), plans, specifications, drawings, franchises, utility agreements and similar materials not yet obtained, and any other documents and information related to the Development, reports, Plans and Specifications, and general documents associated with the Development. For purposes of clarifying the foregoing, "Collateral Documents" shall expressly exclude any documents that, pursuant to applicable law, the Developer does not have the right to pledge and assign as contemplated by this Agreement.

(u) "Commencement of Construction" means the date on which the construction commences on the Development, as specified in the Schedule of Performance.

(v) "Completion of Construction" means the date the Certificate of Completion for the Development is issued by the City, as specified in the Schedule of Performance.

(w) "Conceptual Site Plan" means the schematic documents showing the basic physical characteristics of the Development and the location of Improvements on the Property, including preliminary building plans and section and elevations of the Development. The Conceptual Site Plan is attached hereto as Exhibit A-2, and includes the preliminary "Plans and Specifications".

(x) "Construction Contract" means the construction contract approved by the City pursuant to the terms of Section 6.9 hereof.

(y) "County" means the County of Alameda, a political subdivision of the state of California.

(z) "CPI" means Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Jose-San Francisco- Oakland area or any successor thereof.

(aa) "Developer" has the meaning set forth in the opening paragraph of this Agreement, and shall also be referred to as the Partnership once formed.

(bb) "Developer Event of Default" has the meaning set forth in Section 9.3, below.

(cc) "Developer Fee" means the fee paid to the Developer, SAHA or any affiliates thereof, in the amount and for the purposes set forth in Section 3.8.

(dd) "Development" means the ground leased Property and the Improvements.

(ee) "Escrow" means the escrow established with the Title Company for the purpose of leasing the Property from the City to the Developer.

(ff) "Evidence of Insurance Coverage" has the meaning set forth in Section 4.7 below.

(gg) "Governmental Approvals" has the meaning set forth in Section 4.4 below.

(hh) "Gross Revenue" with respect to a particular calendar year, means all revenue, income, receipts, and other consideration actually received by Developer from operation and leasing of the Development, including but not limited to:

(i) all rents, fees and charges paid by tenants, payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income;

(ii) Subject to the rights of Senior Lenders, the proceeds of business interruption or similar insurance;

(iii) Any payment received in consideration for the leasing or other use of any portion of the Development;

(iv) Subject to the rights of Senior Lenders, the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development (or applied toward the cost of recovering such proceeds);

(v) Subject to the rights of Senior Lenders, condemnation awards for a taking of part or all of the Development for a temporary period; and

(vi) Gross Revenue shall exclude tenants' security deposits, loan proceeds, capital contributions or other similar advances.

(ii) "Ground Lease" means the long-term lease between the City and the Developer under which the Developer shall lease the Property from the City, substantially in the form of Exhibit D.

(jj) "Hazardous Materials" means any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous

wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations, except such of the foregoing as may be customarily used in construction, operation and/or occupancy of projects like the Development or kept and used in and about residential property of this type.

(kk) "Hazardous Materials Claim" any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Development pursuant to Hazardous Materials Laws.

(ll) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

(mm) "HUD" means the United States Department of Housing and Urban Development.

(nn) "Improvements" means the sixty-two (62) units of affordable multi-family rental housing used in accordance with this Agreement, including one (1) manager's unit, all common areas, amenities, appurtenances, improvement easements, buildings and fixtures associated with the Development (including the Bike Trail Improvements).

(oo) "Investor" means a tax credit investor limited partner entity admitted to the Partnership for purposes of syndicating federal low-income housing tax credits established pursuant to Section 42 of the Internal Revenue Code of 1986, committed to purchasing a limited partnership interest in the Developer.

(pp) "Leasehold Deed of Trust" means the leasehold deed of trust that will encumber the Developer's leasehold interest in the Property to secure repayment of the Promissory Note, substantially in the form attached hereto as Exhibit G.

(qq) "Lender's Share of Residual Receipts" means fifty percent (50%) of the Residual Receipts.

(rr) "Management Agent" means a management agent retained by the Developer and approved by the City in accordance with the provisions of Sections 7.8 and 7.9 to manage the Development.

(ss) "Management Plan" shall have the meaning specified in Section 7.8 below.

(tt) "Marketing Plan" has the meaning set forth in Section 7.14 below.

(uu) "Memorandum of DDA" means the memorandum of the Disposition, Development and Funding Agreement to be recorded against the Developer's leasehold interest in the Property on the Close of Escrow. The form of the Memorandum of DDA is attached as Exhibit H.

(vv) "Memorandum of Ground Lease" means the memorandum of the Ground Lease to be recorded against the Developer's leasehold interest in the Property on the Close of Escrow. The form of the Memorandum of Ground Lease is attached as Exhibit I.

(ww) "Net Excess Proceeds" means the portion of the actually received Approved Financing for the construction of the Development that is not required to pay the actual costs of acquisition, construction and development of the Development (including but not limited to the funding of reserves and repayment of construction financing). Net Excess Proceeds, if any, shall be determined pursuant to the procedure set forth in Section 3.5(c).

(xx) "Notice of Affordability Restrictions" means that certain Notice of Affordability Restrictions on Transfer of Real Property to be recorded against the Property on the Close of Escrow. The form of the Notice of Affordability Restrictions is attached as Exhibit L.

(yy) "Official Records" means the official records of the County of Alameda, California.

(zz) "Operating Memorandum" has the meaning given in Section 12.19 below.

(aaa) "Parties" means the City and the Developer, and the term Party shall refer to each of them individually.

(bbb) "Partnership" means the limited partnership to be formed, of which Developer or SAHA Affiliate will be the managing general partner, formed pursuant to the Partnership Agreement.

(ccc) "Partnership Agreement" an agreement of limited partnership and related documents (including, without limitation, a budget for the use of capital contributions, any funding agreement, and any option for the Developer, SAHA, or a SAHA Affiliate to repurchase the Development from the Partnership).

(ddd) "Permanent Financing" means the sources of approved permanent financing for the Development as listed in the Financing Plan for the Development approved by the City pursuant to Section 4.5 and as may be amended.

(eee) "Promissory Note" shall mean the promissory note that will evidence the Developer's obligation to repay the City Loan as set forth in this Agreement, substantially in the form of Exhibit F.

(fff) "Property" has the meaning set forth in Recital B.

(ggg) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants that will be recorded against the Developer's leasehold interest in the Property upon execution of the Ground Lease and will restrict the Development and use of the Property to affordable housing, the form of which is attached hereto as Exhibit E.

(hhh) "Residual Receipts" in a particular calendar year shall mean the amount by which Gross Revenue exceeds Annual Operating Expenses.

(iii) "SAHA" means Satellite Affordable Housing Associates, a California corporation.

(jjj) "SAHA Affiliate" means an entity in which SAHA has: (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the administrative general partner of the Developer; and (iii) board of directors that overlap by fifty percent (50%) or more of their directors, or direct or indirect control of a majority of the directors in the case of a corporation.

(kkk) "Schedule of Performance" means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the disposition of the Property and the construction of the Development. The Schedule of Performance is attached to this Agreement as Exhibit B.

(lll) "Security Financing Interest" has the meaning set forth in Section 10.1.

(mmm) "Senior Lender" has the meaning set forth in Section 3.10(b) below.

(nnn) "Tax Credit Funds" means the proceeds from the syndication of a limited partnership interest in the Partnership to a Tax Credit Investor in the anticipated amount set forth in the Approved Financing Plan, or such other amount as may be approved by the City in an amendment to the Approved Financing Plan.

(ooo) "Tax Credit Investor" or "Investor" means the entity that, in consideration of an allocation of Tax Credits, acquires a limited partner interest in the Partnership.

(ppp) "Tax Credit Reservation" means a preliminary reservation of Tax Credits from TCAC.

(qqq) "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 Sections 50199, et seq.

(rrr) "TCAC" means the California Tax Credit Allocation Committee.

(sss) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until the fifty-seventh (57th) anniversary of the Effective Date; or that date of earlier termination pursuant to the terms of this Agreement.

(ttt) "Title Company" means the Oakland, California office of Old Republic Title Company, located at 555 12th St. Ste. 2000, Oakland, CA. 94607, unless modified pursuant to Section 5.2.

(uuu) "Transfer" has the meaning set forth in Section 8.1.

(vvv) "Unit" means one of the units constructed on the Property and Units shall refer to all units constructed on the Property.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated in the Agreement:

- Exhibit A-1: Legal Description of the Property
- Exhibit A-2: Conceptual Site Plan
- Exhibit B: Schedule of Performance
- Exhibit C: Approved Financing Plan
- Exhibit D: Form of Ground Lease
- Exhibit E: Form of Regulatory Agreement
- Exhibit F: Form of Promissory Note
- Exhibit G: Form of Leasehold Deed of Trust
- Exhibit H: Memorandum of DDA
- Exhibit I: Memorandum of Ground Lease
- Exhibit J: Form of Residual Receipts Report
- Exhibit K: Form of Certificate of Completion
- Exhibit L: Form of Notice of Affordability Restriction
- Exhibit M: Form of Bicycle Path Easement
- Exhibit N: Bike Trail Improvements- Path Detail
- Exhibit O: Form of Utility Easements

ARTICLE 2. PURPOSE AND OVERVIEW

Section 2.1 Scope and Purpose of Agreement. The purposes of this Agreement, as more specifically set forth herein, are to: (a) provide for the orderly construction and completion of the Development; and (b) set forth the ongoing requirements for the operation and maintenance of the Development.

Section 2.2 Land Transfers Property.

(a) Land Interests as of Effective Date. As of the Effective Date, the City owns the fee interest in the entire Property.

(b) Land Interests Following the Close of Escrow. Following the Close of Escrow the Parties will hold the following interests in real property:

(i) The Developer will hold a leasehold interest in the Property pursuant to the Ground Lease and a fee interest in all improvements thereon;

(ii) The City will own the fee interest in the Property, subject to the Ground Lease;

(c) Bike Trail Improvement after Completion. Under this Agreement the Developer agrees to construct the Bike Trail Improvements which shall be part of the Developer's leasehold interest in the Property until Certificate of Occupancy. Upon Certificate of Occupancy, the Developer will request removal of access restrictions to the Bike Trail Improvements, at which point the Bike Easement shall become effective.

Section 2.3 Recordation of Memorandum of this Agreement. As part of the Close of Escrow, the Memorandum of DDA will be recorded against the Developer's leasehold interests in the Property, subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City, or as otherwise set forth in this Agreement.

ARTICLE 3. CITY FUNDING PROVISIONS

Section 3.1 City Loan. The City shall provide the "City Loan" to the Developer to finance the acquisition and construction of the Development in the principal amount of approximately Five Million Fifty-Six Thousand and Ninety-Four Dollars (\$5,056,094), consisting of two components including: (a) the "Capitalized Land Rent Component" in an amount not to exceed Four Million Six Hundred Fifty Thousand Dollars (\$4,650,000) representing the capitalized rent value of the Property (established by an appraisal) made from the City to the Developer pursuant to the terms of this Agreement; and (b) the "Predevelopment Component" in the amount of Four Hundred Six Thousand and Ninety-Four Dollars (\$406,094), which amount shall be increased from time-to-time commensurate with the applicable fees schedules and documentation of increased loan amount can be approved and provided administratively by the Planning Director. . The Developer's obligation to repay the City Loan shall be evidenced by the Promissory Note and secured by the Assignment Agreement, which shall be executed by the Developer concurrently herewith.

Section 3.2 Interest.

(a) Subject to the provisions of Section 3.2(b) below, the City Loan shall bear no interest.

(b) Upon the occurrence of a default by the Developer that remains uncured after expiration of the applicable cure period, at the City's option, the principal amount of the City Loan shall be immediately due and payable, and shall bear interest at the lesser of ten percent (10%) per annum or the maximum rate permitted by law, which will accrue, as of the date of default and continue until such time as the City Loan funds are repaid in full or the default is cured. In this regard, payments received from the Developer shall be applied first to interest accrued and the remaining balance, if any, to principal.

Section 3.3 Use of City Loan.

(a) The Developer shall use the City Loan to fund capitalized rent payments, and predevelopment costs of the Development consistent with the Approved Financing Plan.

(b) Other Uses Prohibited. The Developer shall not use the City Loan funds for any other purpose without the prior written consent of the City.

Section 3.4 Security.

(a) Assignment of Collateral Documents. The Developer's obligations under this Agreement shall be secured by the Assignment Agreement. The Developer will grant to the City, pursuant to the Assignment Agreement, a valid, second priority, continuing security interest in all of the Developer's right, title, and interest presently existing and after-acquired or arising Collateral in order to secure prompt, full and complete payment of any and all obligations to the City under this Agreement and in order to secure prompt, full and complete performance by Developer of each of its covenants and duties under each of the City Loan Documents. For purposes hereof, the Collateral Documents subject to the Assignment Agreement shall expressly exclude any document that, pursuant to applicable law, the Developer do not have the right to pledge and assign as contemplated by this Agreement. The City shall not have any obligation under any Collateral Documents assigned pursuant to the Assignment Agreement until it expressly agrees in writing to be bound by such contracts or agreements. Upon a Developer Event of Default that has not been cured pursuant to this Agreement, in accordance with the Assignment Agreement, the City may use any of the Collateral Documents to the fullest extent allowed thereby for any purpose for which the Developer could have used them for construction of the Development, and the Developer shall cooperate with the City to implement the Assignment Agreement and immediately deposit with the City, for the City's use, all the Collateral Documents.

(b) Deed of Trust. The Leasehold Deed of Trust will secure the City Loan. The Leasehold Deed of Trust shall be recorded against the Developer's leasehold interest in the Property at the Close of Escrow.

Section 3.5 Repayment Schedule. The City Loan shall be repaid as follows:

(a) Annual Payments. Commencing on the April 1 following the first full year after the issuance of a Certificate of Completion, and on each April 1 of each year thereafter for the Term, the Developer shall make repayments of the City Loan in the amount of the City's Prorata Share of Lender's Residual Receipts. Payment of the City's Prorata Share of the Lender's Share of Residual Receipts shall be credited first against unpaid accrued interest generated pursuant to Section 3.2(b) above, and then against outstanding principal, and shall be accompanied by the Developer's report of Residual Receipts (including the independent auditor's report regarding the auditor's review of Annual Operating Expenses required by this Section). The Developer shall provide the City in the form attached hereto as Exhibit J, within ninety (90) days following the end of each calendar year, a report showing the actual income and expenditures with respect to the Development for the immediately preceding calendar year, the calculation of Annual Operating Expenses, Gross Revenue, and Residual Receipts and the status of all reserve funds, including without limitation, an annual audited financial statement for the Development prepared by a certified public accountant approved by the City.

(b) Payment in Full. Subject to the provisions of subsection (e) below, all principal and interest, if any, on the City Loan shall, at the option of the City, be due and payable upon the earliest of: (i) a Transfer other than a Transfer permitted or approved by the City as

provided in Article 8 below; (ii) the occurrence of a default of the Developer for which the City exercises its right to cause the City Loan indebtedness to become immediately due and payable; or (iii) the expiration of the Term.

(c) Prepayment. The Developer shall have the right to prepay the City Loan at any time. However, this Agreement and the Regulatory Agreement shall remain in effect for their entire respective terms, regardless of any prepayment or timely payment of the City Loan.

Section 3.6 Conditions Precedent to Disbursement of City Loan. The City shall not be obligated to make any disbursements of the City Loan proceeds for costs of the Development unless the following conditions precedent are satisfied prior to each such disbursement of the City Loan:

(a) Disbursement of Capitalized Rent Component. The City shall not be obligated to make any disbursements of any portion of the Capitalized Rent Component unless the following conditions precedent are satisfied by the Developer.

(i) There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under Section 9.3 of this Agreement or any other project financing agreements or contracts;

(ii) The conditions set forth in Section 5.3 have been and continue to be satisfied;

(iii) The Developer has provided evidence reasonably acceptable to the City that the Developer is prepared to commence construction of the Development no later than the date set forth in the Schedule of Performance; and

(iv) The City has received a copy of the General Contractor's Construction Contract as required pursuant to Section 6.9 below;

(v) The City has received and approved the labor and material (payment) bonds as required pursuant to Section 6.2 below;

(vi) The Developer has executed a Partnership Agreement approved by the City, with the Tax Credit Investor, in which the Tax Credit Investor is obligated to provide Developer the Tax Credit Investor Equity;

(vii) Developer has closed, or is concurrently closing, on the Construction Loan and is eligible to receive the proceeds of all construction loans and has received the amount of Tax Credit Investor Equity stated as the initial installment in the Partnership Agreement;

(viii) The undisbursed proceeds of the City Loan and the Approved Financing, together with other funds or firm commitments for funds that the Developer has obtained in connection with the Development, are not less than the amount that the City

reasonably determines is necessary to pay for construction of the Development and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement;

(ix) Developer has obtained all permits and approvals necessary for the construction of the Development, as required by Section 4.4, provided however the Developer may satisfy this requirement with regards to the building permit, if the Developer provides the City with a permit ready letter from the City Building Department

(x) Developer has submitted a certification from the architect certifying that the plans and specifications and design documents for the Development ensure that the Units are in compliance with Section 6.20 of this Agreement; and

(xi) The City has received a written draw request from the Developer, including certification that the condition set forth in Section 3.6(a)(i) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Financing Plan for the Development, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

Section 3.7 Reports and Accounting of Residual Receipts.

(a) Audited Financial Statement. In connection with the annual repayment of the City Loan under Section 3.5, within ninety (90) days following the end of each calendar year, the Developer shall furnish to the City an audited statement duly certified by an independent firm of certified public accountants approved by the City, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding calendar year.

(b) Books and Records. The Developer shall keep and maintain at the Development, or elsewhere with the City's written consent, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail the Developer's calculation of Residual Receipts. Books, records and accounts relating to the Developer's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement which provide for the calculation of Residual Receipts on a cash basis. All such books, records, and accounts shall be open to and available for inspection by the City, its auditors or other authorized representatives at reasonable intervals during normal business hours on reasonable prior notice to the Developer. Copies of all tax returns and other reports that the Developer may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the City at the place that the books, records and accounts of the Developer are kept. The Developer shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

(c) City Audits. The receipt by the City of any statement pursuant to subsection (a) above or any payment by the Developer or acceptance by the City of any loan repayment for any period shall not bind the City as to the correctness of such statement or such

payment. Within three (3) years after the receipt of any such statement, the City or any designated agent or employee of the City at any time shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of the Developer and other places where records are kept. Immediately after the completion of an audit, the City shall deliver a copy of the results of such audit to the Developer. If it shall be determined as a result of such audit that there has been a deficiency in a loan repayment to the City, then such deficiency shall become immediately due and payable with interest at the default rate set forth in Section 3.2(b) above, determined as of and accruing from the date that said payment should have been made. In addition, if the Developer's auditor's statement for any calendar year shall be found to have understated Residual Receipts by more than five percent (5%) and the City is entitled to any additional City Loan repayment as a result of said understatement, then the Developer shall pay, in addition to the interest charges referenced hereinabove, all of the City's reasonable costs and expenses connected with any audit or review of the Developer's accounts and records.

Section 3.8 Developer Fee.

(a) The amount and the terms of the City Loan, as provided in this Article 3, have been established by taking into account the anticipated costs of development, including a Developer Fee not to exceed the amount allowed by TCAC and as approved by the County. Except for the Developer Fee, no compensation from any source shall be received by or be payable to the Developer or SAHA, or any SAHA Affiliate (collectively the "Developer Fee Recipient") in connection with the provision of development and construction management services for the acquisition and construction of the Development. Except for the Developer Fee and amounts payable to the General Contractor under the Construction Contract, no compensation from any source shall be received by or be payable to the Borrower or any affiliate of the Borrower in connection with the provision of development and construction management services for the acquisition and construction of the Development.

(b) Cost savings at completion. Subject to the rights of Senior Lenders, pursuant to Section 3.5(c), the Borrower may request to reduce the outstanding balance of the Deferred Developer Fee subject to the City's reasonable approval. Although no City approval is required in order to increase the Deferred Developer Fee, the Borrower shall notify the County of any change to the amount of Deferred Developer Fee.

Section 3.9 Assumption. The Promissory Note shall not be assumable by successors and assigns of the Developer without the prior written consent of the City, which consent shall be granted or denied in the City's sole discretion.

Section 3.10 Subordination.

(a) Subordination of Leasehold Deed of Trust. The City agrees to subordinate the Leasehold Deed of Trust and Memorandum of DDA to other Approved Financing (in each case, a "Senior Lien"), but only on condition that all of the following conditions are satisfied:

(i) All the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide acquisition, construction or permanent financing (or City

approved refinancing thereof) for the Development (including Bike Path Improvements), or any combination thereof.

(ii) The proposed lender (each, a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with the Developer, SAHA or any SAHA Affiliate, other than as a depositor or a lender.

(iii) The Developer must demonstrate to the City's reasonable satisfaction that subordination of the Leasehold Deed of Trust is necessary to secure adequate construction, rehabilitation and/or permanent financing (or City approved refinancing thereof) to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by this Agreement. To satisfy this requirement, the Developer must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate construction and/or permanent financing (or City approved refinancing thereof) to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(iv) The subordination agreement(s) must be structured to minimize the risk that the Leasehold Deed of Trust would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by the Developer, including: (1) providing the City or its successor with copies of any notices of default at the same time and in the same manner as provided to the Developer; and (2) providing the City with a cure period of at least sixty (60) days to cure any default.

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

(vi) No subordination may limit the effect of the Leasehold Deed of Trust before a foreclosure, nor require consent of the holder of the Senior Loan to exercise any remedies by the City under the Loan Documents.

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

(b) The City will not subordinate the Regulatory Agreement to an encumbrance securing any other financing, without the prior approval of the City Council.

(c) In no event shall the City subordinate its fee interest in any portion of the Property to any mortgage, deed of trust, or regulatory agreement with the exception of that certain Lease Rider Agreement or other similar encumbrance required by TCAC or HCD to be recorded against the County's fee interest in the Property. The City acknowledges that it may be

requested to record or attach a lease rider or similar encumbers on its fee interest in the Property, as required by TCAC or HCD, and the consent to the recordation of such document against Borrower's leasehold interest in the Property will not be unreasonably conditioned, delayed or withheld.

Section 3.11 Non-Recourse.

(a) Except as provided below, upon recordation of the Leasehold Deed of Trust, the Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the City Loan or the performance of the covenants of the Developer under the Leasehold Deed of Trust. The sole recourse of the City with respect to the principal of, or interest on, the Promissory Note and defaults by the Developer in the performance of its covenants under the Leasehold Deed of Trust shall be to the property described in the Leasehold Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall:

(i) Limit or impair the enforcement against all such security for the Promissory Note of all the rights and remedies of the City thereunder;

(ii) Be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Promissory Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto;

(iii) Be deemed in any way to limit the rights of the City to obtain specific performance by the Developer of its covenants under the City Loan Documents, other than the covenants to pay the City principal and interest due under the Promissory Note;

(b) The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Promissory Note and the performance of the Developer's obligations under the Leasehold Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Developer of its obligation to indemnify the City under this Agreement, or liability for:

(i) Fraud or willful misrepresentation of the Developer;

(ii) The failure to pay taxes, assessments or other charges which may create liens on the Developer's interest in the Property that are payable or applicable prior to any foreclosure under the Leasehold Deed of Trust (to the full extent of such taxes, assessments or other charges);

(iii) The fair market value of any personal property or fixtures removed or disposed of by the Developer other than in accordance with the Leasehold Deed of Trust; and/or

(iv) The misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Development.

Section 3.12 Anti-Lobbying Certification. The Developer certifies, to the best of the Developer's knowledge or belief, that:

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

(a) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(b) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

Section 3.13 City Grant. One (1) business day prior to or concurrently with the Close of Escrow, so long as the conditions set forth in Section 3.6 have been satisfied, the City shall provide the City Grant in the amount not to exceed Twenty Five Thousand Dollars (\$25,000) which the Developer shall use solely towards the cost of the construction of the Bike Trail Improvements required to be constructed hereunder. If and to the extent the City is unable to or does not contribute the City Grant, the Developer is not obligated to construct the Bike Trail Improvements.

ARTICLE 4. PREDISPOSITION REQUIREMENTS

Section 4.1 Conditions Precedent to Conveyance. The requirements set forth in this Article are conditions precedent to the City's obligations to lease the Property to the Developer.

Section 4.2 Land Use Approvals. The Developer acknowledges that execution of this Agreement by the City, and the City's approvals obtained pursuant to this Agreement are with regard to this Agreement only and do not constitute approval by the City in its typical regulatory or administrative capacity of any required permits, applications, allocations or maps, are not a substitute for the City's typical application, allocation, mapping, permitting, or approval process, and in no way limit the discretion of the City in the permit, applications, allocation, mapping or approval process. In addition to complying with the terms and conditions of this Agreement, the

Developer must comply with the City's and other government entities' regulatory and administrative processes.

Section 4.3 Conceptual Site Plan. The Developer has submitted and the City has approved the Conceptual Site Plan, attached hereto as Exhibit A-2. The Conceptual Site Plan will serve as a basis for the development of the precise plans and the Plans and Specifications and the application for the other Governmental Approvals.

Section 4.4 Other Governmental Approvals. As of the date of this Agreement, the Developer has submitted an entitlements application allowing for the construction of the Development called for in the Plans and Specifications (collectively the "Governmental Approvals"). The Developer shall diligently pursue and obtain building permits and Governmental Approvals for the Development, and no later than the date set forth in the Schedule of Performance, the Developer shall deliver evidence to the City that the Developer are entitled to issuance of a building permit for the Development upon payment of permit fees.

Section 4.5 Financing Plan.

(a) As a condition precedent to the Close of Escrow, the Developer shall have submitted and received approval from the City for any updates or amendments to the Approved Financing Plan, containing the following with regards to the Development:

(i) An updated "sources and uses" breakdown of the costs of constructing the Development in accordance with this Agreement. The sources and uses shall include all assumptions for all debt and equity financing, shall show the timing of uses of each source of financing and shall break down which expenses each source of financing is funding. The sources and uses shall detail the amount of the Developer Fee, and shall conform to all applicable lender requirements.

(ii) An operating proforma for the first thirty (30) years of operation of the Development pursuant to the terms of this Agreement and the Regulatory Agreement, including funding for the provision of resident services.

(iii) Copies of all required funding commitments for loans, grants, or other financial assistance to assist in financing the construction and permanent financing for the Development, (including, but not limited to, a preliminary tax credit reservation and an executed commitment letter from an equity investor acceptable to the City for the Tax Credit Funds), certified by the Developer to be true and correct copies thereof;

(iv) A certified financial statement or other financial statement in such form reasonably satisfactory to the City evidencing other sources of capital sufficient to demonstrate that the Developer has adequate funds available and is committing such funds to cover the difference, if any, between costs of development and construction of the Improvements and other financial documentation stating the amount available to the Developer from external sources;

(v) Any other information that is reasonably necessary to the City in determining that the Developer has the financial capability to pay all costs of constructing the Improvements.

(b) Upon receipt by the City of the updates to the Approved Financing Plan, the City shall promptly review the updates to the Approved Financing Plan and shall approve or disapprove it within fifteen (15) days after submission if it conforms to the provisions of this Agreement. The City's review of the updates to the Approved Financing Plan shall be limited to determining if the contemplated financing will be reasonably available, if the financing contemplated in the Approved Financing Plan would provide sufficient funds to undertake and complete construction of the Development, and determining if the updates to the Approved Financing Plan are consistent with the terms of this Agreement. If the City disapproves an update to the Approved Financing Plan, the City shall specify in writing the reasons for the disapproval. The Developer shall thereafter resubmit a revised Financing Plan to the City for its approval within fifteen (15) days after the City's notification of disapproval. The City will either approve or disapprove the revised update to the Approved Financing Plan within fifteen (15) days after resubmission by the Developer.

(c) The Developer shall submit to the City, for its review and approval, any required amendments to the Approved Financing Plan including but not limited to any material amendments or modifications to the development budget, investor commitment letter, or the commitment letter from any other lender, indicating that actual costs of the Development and how they will vary from the line item costs shown on the approved Financing Plan. Any proposed revisions to the Approved Financing Plan shall be considered and approved or disapproved by the City in the same manner and according to the same timeframe set forth in subsection (b) above. Until a proposed amendment or revision to the Approved Financing Plan is approved in writing by the City, the Approved Financing Plan shall govern the financing of the Development.

Section 4.6 Evidence of Availability of Funds. No later than the date set forth in the Schedule of Performance, the Developer shall submit to the City evidence reasonably satisfactory to the City that the financing and funding identified in the Approved Financing Plan will be available following the Close of Escrow for the construction of the Development.

Section 4.7 Evidence of Insurance.

(a) No later than the date set forth in the Schedule of Performance, the Developer shall furnish to the City evidence of the insurance coverage meeting the requirements of Section 7.11 below ("Evidence of Insurance Coverage").

(b) The City shall review and reasonably approve or disapprove the evidence of insurance coverage not less than ten (10) business days after submission of complete information in the form required by City. If the City disapproves the evidence of insurance coverage, it shall specify in writing the reasons for such disapproval. The Developer shall resubmit the information required within ten (10) business days of the notification of disapproval. The City shall either approve or disapprove the submitted revised evidence of insurance within ten (10) business days of the date such revised information is received by the

City. No work shall be initiated on the Development prior to receipt of the City's approval of insurance required by this Section.

Section 4.8 Tax Credit Reservation.

(a) The Developer intends to utilize Tax Credit Funds to partially finance the Development, which are subject to the application process implemented by TCAC. Receipt by the Developer of a Tax Credit Reservation pursuant to this Section shall be a condition precedent to the City's obligation to execute the Ground Lease. To satisfy the requirements of this Section, the Tax Credit Reservation shall be for an amount sufficient to meet the requirements of the Approved Financing Plan to be approved by the City pursuant to Section 4.5.

(b) No later than the date set forth in the Schedule of Performance, the Developer shall submit a timely and complete application for the Tax Credit Reservation to TCAC. If the Developer does not receive a Tax Credit Reservation by September 30, 2023, then the City and the Developer will confer in good faith for a period not to exceed sixty (60) days to determine if the Developer should submit a further application to TCAC in a subsequent preliminary reservation round, subject to the continued availability of City funding sources committed hereunder, or if a feasible and mutually acceptable alternate arrangement can be made to finance development of the Improvements. If no agreement is reached between the City and the Developer within such sixty (60) day period regarding the alternative financing structure for the construction of the Improvements, subject to subsection (d) below, this Agreement may be terminated by written notice from the City to the Developer. Any agreements that are reached between the Parties regarding an alternative financing plan for the construction of the Improvements shall be memorialized in an amendment to this Agreement.

(c) Upon an award of the Tax Credit Reservation from TCAC, the Developer shall exercise diligent good faith efforts to obtain a funding commitment from the Tax Credit Investor for the Tax Credit Funds. Such funding commitment shall be in a form reasonably acceptable to the City. Procurement of the Tax Credit Reservation and an acceptable funding commitment for the Tax Credit Funds shall be a condition precedent to the City's obligation to convey the Property to the Developer pursuant to the Ground Lease.

Section 4.9 Other Approved Financing. As set forth in the Schedule of Performance, in addition to the Tax Credit Funds all other financing necessary to construct the Improvements, as required and approved by the City in the Approved Financing Plan, shall be closed by the Developer prior to, or simultaneously with, the execution of the Ground Lease by the City. The Developer shall also submit to the City evidence reasonably satisfactory to the City that any conditions to the release or expenditure of funds described in the Financing Plan for the Development as the sources of funds to pay the costs of constructing the Improvements have been met or will be met upon the execution of the Ground Lease and subject to the Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Improvements. Submission by the Developer, and approval by the City, of such evidence of funds availability shall be a condition precedent to the City's obligation to execute the Ground Lease and leasing the Property to the Developer.

ARTICLE 5.
LEASE OF PROPERTY

Section 5.1 Lease.

(a) Provided the pre-disposition requirements set forth in Article 5 and the additional closing conditions set forth in Section 5.3 have been satisfied, the City shall lease the Property to the Developer pursuant to the terms, covenants, and conditions of this Agreement and the Ground Lease.

Section 5.2 Opening Escrow. The Parties shall establish the Escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, which instructions shall be consistent with this Agreement. Upon request by the Developer, the Title Company may be changed to a company requested by the Developer, provided (a) the title company is approved by the City and (b) the Developer shall pay all title insurance and escrow costs of the new title company.

Section 5.3 Closing.

(a) The Close of Escrow shall occur within thirty (30) days following the date on which all conditions precedent to conveyance set forth in Article 5 have been satisfied, but in no event later than the date set forth in the Schedule of Performance, and only in the event that all conditions precedent to conveyance set forth in Article 5 have been satisfied or waived by the City.

(b) Closing on Ground Lease. In addition to the conditions precedent set forth in Article 5, the following conditions shall be satisfied prior to or concurrently with, and as conditions of, execution of the Leases unless waived in writing by the City and the Developer:

(i) The Developer shall provide the City with a certified copy of a partnership authorizing resolution, approving this Agreement, the Ground Lease, and the conditions and covenants set forth in this Agreement and the Ground Lease;

(ii) The Developer shall have executed and delivered the Ground Lease, the Memorandum of Ground Lease, the Promissory Note, the Leasehold Deed of Trust, the Regulatory Agreement, and any other documents and instruments required to be executed and delivered, all in a form and substance satisfactory to the City;

(iii) The Memorandum of DDA, the Memorandum of Ground Lease, the Leasehold Deed of Trust, the Regulatory Agreement, and Notice of Affordability Restrictions shall have been, or concurrently with the Close of Escrow will be, recorded against the Developer's interest in the Property, as liens subject only to the exceptions authorized by the City.

(iv) The City has received reviewed and approved any updates or amendments to the Approved Financing Plan pursuant to Section 3.5 above;

(v) The City shall have received and approved any updates to the Plans and Specifications for the Development and the Developer shall have obtained issuance of building permits (or permit ready letter) and all Governmental Approvals necessary for construction of the Development by paying the required building permit fees;

(vi) The Developer shall have furnished the City with evidence of the insurance coverage meeting the general insurance requirements set forth in Section 7.11;

(vii) The Title Company is prepared and fully authorized to record the Leasehold Deed of Trust and is unconditionally and irrevocably committed to issuing an ALTA 2006 LP-10 Lender's Policy of insurance insuring the lien priority of the Leasehold Deed of Trust in the amount of the City Loan, subject only to such liens approved by the City in the Financing Plan and such exceptions and exclusions as may be reasonably acceptable to the City and containing such endorsements as the City may reasonably require;

(viii) There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under Section 9.3 of this Agreement or any other project financing agreements or contracts; and

(ix) All representations and warranties of the Developer contained in any part of this Agreement shall be true and correct in all material respects.

Section 5.4 Condition of Title.

(a) Property. Upon the Close of Escrow, the Developer shall have insurable leasehold interest to the Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (i) applicable building and zoning laws and regulations;
- (ii) the provisions of the Ground Lease;
- (iii) the provisions of the Regulatory Agreement;
- (iv) the provisions of this Agreement;
- (v) the Leasehold Deed of Trust;
- (vi) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Memorandum of the Ground Lease;

(vii) the liens of any loan approved by the City in the Financing Plan, in such priority as approved in writing by the City pursuant to Section 3.10 above; and

(viii) exceptions __ through __ as listed in the Preliminary Title Report dated as of [Insert date of Title Report].

Section 5.5 Condition of Property.

(a) **"AS IS" CONVEYANCE. THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING AND THE**

DEVELOPER IS OBTAINING THE LEASEHOLD INTEREST IN THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (1) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (2) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (3) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY; (4) THE DEVELOPMENT POTENTIAL OF THE PROPERTY AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (5) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (6) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (7) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (8) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(b) Survival. The terms and conditions of this Section shall expressly survive the Close of Escrow, shall not merge with the provisions of the Ground Lease, or any other closing documents and shall be deemed to be incorporated by reference into the Ground Lease. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer acknowledges that the lease payments pursuant to the Ground Lease reflect the "as is" nature of this conveyance and any faults, liabilities, defects or other adverse matters that may be associated with the Property. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

(c) Acknowledgment. The Developer acknowledges and agrees that: (i) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the lease payments pursuant to the Ground Lease have been adjusted to reflect the same and that the City would not have agreed to convey the Property to the Developer pursuant to the Ground Lease without the disclaimers and other agreements set forth in this Section.

(d) Release of the City. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City its board members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (ii) any presence of Hazardous Materials; and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(e) Scope of Release. The release set forth in this Section includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Developer's Initials: _____

(f) Notwithstanding the foregoing, the Developer's release of the City shall not apply to, nor shall the City be released from, the City's actual fraud or misrepresentation.

Section 5.6 Costs of Escrow and Closing. Ad valorem taxes, if any, shall be prorated as of the Close of Escrow. The Developer shall pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs to close the Escrow.

ARTICLE 6. CONSTRUCTION OF IMPROVEMENTS

Section 6.1 Construction Pursuant to Plans. Unless modified by operation of Section 6.5, the Developer shall cause the Development to be constructed substantially in accordance with the Conceptual Site Plan and Plans and Specifications and the terms and conditions of the Governmental Approvals. The Developer shall cause all construction work performed in connection with this Agreement to be performed in compliance with: (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, including the prevailing wage provisions; and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Each element of the construction work shall proceed only after procurement of each permit, license, or other authorization that may be required for such element by any governmental agency having jurisdiction, and the Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Improvements.

Section 6.2 Construction Bonds. Not later than five (5) business days prior to the proposed Commencement of Construction, the Developer shall deliver to the City copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled cost of the construction of the Development. Such bonds shall be issued by a surety licensed to do business in California and reasonably acceptable to the City and must name the City as a co-obligee or additional insured.

Section 6.3 Building Permits. Within the time specified in the Schedule of Performance, and prior to the Commencement of Construction and as required pursuant to Section 6.6 below, the Developer shall obtain building construction permits for the Development. The applications for building and construction permits shall be consistent with and incorporate the approved Plans and Specifications.

Section 6.4 Construction of Improvements. The Developer shall construct the Development as detailed in the Plans and Specifications and complete construction within the time specified in Section 6.7 below.

Section 6.5 Change in Construction of Improvements.

(a) Developer shall construct the Development in conformance with the approved Plans and Specifications. Developer shall notify the City in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by the City must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: (1) any change in the work the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (2) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000).

(b) Consent to any additions, changes, or deletions to the work do not relieve or release Developer from any other obligations under this Agreement, or relieve or release Developer or its surety from any surety bond. No change which is required for compliance with building codes or other government health and safety regulations shall be deemed material.

Section 6.6 Commencement of Construction.

(a) The Developer shall commence construction of the Development no later than the date set forth in the Schedule of Performance (which is contemplated to be within one hundred eighty (180) days from the award of a tax credit allocation from TCAC pursuant to 4.8 above) but in no event later than **April 30, 2024**, unless the City and the Developer agree to extend such date as a result of the meet and confer required under Section 4.8(b).

(b) Subject to the cure rights set forth in Article 9, failure by the Developer to commence construction of the Development within such time periods shall constitute a default within the meaning and with the effect set forth in Article 9.

Section 6.7 Completion of Construction.

(a) The Developer shall diligently prosecute to completion the construction of the Development no later than the date set forth in the Schedule of Performance, but in no event later than **April 30, 2026** which is the date twenty-four (24) months after the commencement of construction, unless the City and the Developer agree to extend such date as a result of the meet and confer required under Section 4.8(b).

(b) Subject to the cure rights set forth in Article 9, failure by the Developer to complete construction of the Development within such time periods shall constitute a default within the meaning and with the effect set forth in Article 9.

Section 6.8 Course of Construction. Once the Developer commence construction of the Development, the Developer shall not halt or cease construction for a period of more than thirty (30) consecutive days, subject to the terms of Section 12.3 below.

Section 6.9 Construction Contract.

(a) No later than the date set forth in the Schedule of Performance, the Developer shall submit to the City for its limited approval the proposed construction contract for the Development. The City's review and approval shall be limited exclusively to a determination whether: (i) the guaranteed maximum construction cost or stipulated sum set forth in the construction contract is consistent with the Approved Financing Plan; (ii) the construction contract is with a contractor approved by the City; (iii) the construction contract contains provisions consistent with Sections 6.10 through 6.11 of this Agreement; and (iv) the construction contracts require a retention of ten percent (10%) of hard costs until completion of the Development; or as approved by the City at its sole discretion, provided that that Developer may release retention for the following trades prior to completion of the Development: demolition, grading, foundations, framing, underground utilities and joint trench.

(b) The City's approval of the construction contract for the Development shall in no way be deemed to constitute approval of or concurrence with any other term or condition of the construction contract, except as such term or condition may be required by this Agreement.

(c) Upon receipt by the City of the proposed construction contract, the City shall promptly review same and approve it within ten (10) days if the contract satisfies the limited criteria set forth above. If the construction contract is not approved by the City, the City shall set forth in writing and notify the Developer of the City's reasons for withholding such approval. The Developer shall thereafter submit a revised construction contract for City approval, which approval shall be granted or denied in ten (10) days in accordance with the criteria and procedures set forth above. Any construction contract executed by the Developer for the Development shall be in a form approved by the City.

Section 6.10 Construction Pursuant to Plans and Laws.

(a) To the extent required by law, in the construction of the Development, the Developer shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). In addition, to the extent required by law, as applicable, the Developer shall cause its respective contractors and subcontractors to do all the following: (i) all calls for bids, bidding materials and the construction contract documents for the Development must specify that (1) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Development unless registered with the DIR pursuant to Labor Code Section 1725.5, and (2) the Development is subject to compliance monitoring and enforcement by the DIR; (ii) the Developer is required to provide the City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>); (iii) the Developer shall cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; (iv) the Developer shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner. Developer shall indemnify, hold harmless and defend (with counsel reasonably

acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development or any other work undertaken or in connection with the Property.

(b) The prime contractor shall be responsible for ensuring a monthly certified payroll submitted through is required during the term of construction of the Development. Payment of disbursement components may be delayed when certified payrolls are not properly submitted.

(c) The Developer shall indemnify, protect, hold harmless and defend (with counsel reasonably selected by the City) the City, its governing board members, officers, representatives, agents, assigns and employees against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer, or its contractor or subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with the initial construction of the Development or any other work undertaken or in connection with Development and the Property.

(d) For purposes of this Section, the "initial construction" of the Development shall mean the work required in order to construct such improvements and obtain the Certificate of Completion for the Development.

(e) The requirements in this Section survive the repayment of the City Loan, and the reconveyance of the Leasehold Deed of Trust and the termination of the Ground Lease.

Section 6.11 Equal Opportunity. During the construction of the Development there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry, or source of income, in the hiring, firing, promoting or demoting of any person engaged in the construction work.

Section 6.12 Construction Responsibilities.

(a) It shall be the responsibility of the Developer to coordinate and schedule the work to be performed so that commencement and Completion of Construction for all Improvements required to be built pursuant to this Agreement will take place in accordance with this Agreement.

(b) The Developer shall be solely responsible for all aspects of the Developer' conduct in connection with the Development, including (but not limited to) the quality and

suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether the Developer are properly discharging their obligations to the City, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 6.13 Certificate of Completion.

(a) Promptly after completion of the Development, and upon written request from the Developer, in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Development; and the City's determination that the Developer's various obligations with regards to completion of the Development under this Agreement have been met; the City will provide the Developer with a Certificate of Completion for the Development. If the City determines that the Developer does not meet their obligations of this Agreement and the Developer is not entitled to a Certificate of Completion, the City shall within five (5) days of such request, provide the Developer with a written response stating with specificity the obligations required to be completed as a condition for issuing the Certificate of Completion.

(b) The Certificate of Completion shall be conclusive evidence that the covenants in this Agreement with respect to the obligations of the Developer to construct the Development described in such certificates and the dates for the beginning and completion thereof have been met; provided, however, such certifications shall not be conclusive evidence regarding Developer' satisfaction of the prevailing wage requirements of Section 6.10 above. The Certificate of Completion shall be in such form as will enable them to be recorded among the Official Records of the County. Such certifications and determinations shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a deed of trust securing money loaned to finance any portion of Development or any part thereof and shall not be deemed a notice of completion under the California Civil Code.

Section 6.14 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Development, or a stop notice affecting the City Loan is served on the City or any other lender or other third party in connection with the Development, then the Developer shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety acceptable to the City in an amount 1 and 1/2 times the amount of such claim, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice is invalid and/or will be paid or discharged.

(b) If the Developer fail to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Developer's expense. Alternatively, the City may require the Developer

to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.

(c) The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Improvements for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against any portions of the Development. The Developer authorize the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Development and the Property.

Section 6.15 Inspections. The Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection of the Development by the City and by public authorities during reasonable business hours upon forty-eight (48) hours' written notice for the purposes of determining compliance with this Agreement, provided, however, that nothing in this Agreement shall entitle the City to enter an occupied unit in the Development without notice to the tenant thereof, which the Developer shall deliver on behalf of the City, and permission from such tenant to the extent such permission is required by law. Such inspections does not relieve the Developer, or its contractors, from any applicable requirement to obtain other City inspections in connection with the construction of the Improvements.

Section 6.16 Progress Reports and Information. The Developer shall provide any information reasonably requested by the City in connection with the Development. Until such time as the Developer is entitled to issuance of a Certificate of Completion for the Development, the Developer shall provide the City with quarterly progress reports, or as reasonably requested by the City, regarding the status of the construction of the Development.

Section 6.17 Records.

(a) The Developer shall maintain complete, accurate, and current records pertaining to the construction work of their respective parts of the Development for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records upon reasonable notice to the Developer. Such records shall include all invoices, receipts, and other documents related to expenditures from the City Loan. Records must be kept accurate and current.

(b) The City shall notify the Developer of any records it deems insufficient. The Developer shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then the Developer shall begin to correct the deficiency within thirty (30) days and complete the correction of the deficiency as soon as reasonably possible.

Section 6.18 Relocation. The Property is vacant and shall be delivered to the Developer free and clear of tenants. From and after the Close of Escrow, if and to the extent that the conveyance of a leasehold interest in the Property or the construction of the Development result in the permanent or temporary displacement of residential tenants, homeowners, or

businesses, then the Developer shall comply with all applicable local, state, and federal statutes and regulations, (including without limitation California Government Code Section 7260 et seq., and accompanying regulations) with respect to relocation planning, advisory assistance, and payment of monetary benefits. From and after the Close of Escrow, the Developer shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. The Developer shall defend (with counsel reasonably selected by the City) the City, its governing board members, officers, representatives, agents, assigns and employees against any claim for damages, compensation, fines, penalties, relocation payments or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer or the City) to satisfy relocation obligations related to the development of the Development. This obligation to indemnify shall survive termination of this Agreement.

Section 6.19 Financial Accounting and Post-Completion Audits.

(a) No later than ninety (90) days following Completion of Construction of the Development and issuance of the Certificate of Completion, the Developer shall provide to City a financial accounting of all sources and uses of funds. No later than one hundred fifty (150) days following Completion of Construction of the Improvements, the Developer shall submit to the City a copy of the cost certification report prepared by the Developer's accountant and submitted to TCAC showing the sources and uses of all funds utilized for the Improvements.

(b) The Developer shall make available for examination at reasonable intervals and during normal business hours to City all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine, and make excerpts or transcripts from such records upon reasonable prior notice to the Developer. The City, in its reasonable discretion, may make audits of any records related to the development or operation of the Development or the Developer's compliance with the City Documents.

Section 6.20 Accessibility.

(a) The Developer shall construct the Development in compliance with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973 ("Section 504"); Title II and/or Title III of the Americans with Disabilities Act; and Title 24 of the California Code of Regulations and the Uniform Federal Accessibility Standards ("UFAS") (collectively, the "Accessibility Requirements"). In compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.), a minimum of four (4) units in the Development shall be constructed to be readily accessible and usable by households with a mobility impaired member and a minimum of two (2) units shall be constructed and to be readily accessible and usable by households with a hearing or visually impaired member. All Units in the Development shall also be built to comply with the UFAS under 49 C.F.R. 31528.

(b) In compliance with Section 504 and at the times specified in this Agreement, the Developer shall provide the City with a certification from the architect that, to the best of the architect's knowledge, the Development complies with all federal and state accessibility requirements applicable to the Development.

(c) The Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer, its architect, contractor and subcontractors) to construct the Development in accordance with the Accessibility Requirements. The requirements in this subsection survive repayment of the City Loan and the reconveyance of the Leasehold Deed of Trust.

Section 6.21 Art in Public Places Program. Pursuant to Albany Planning and Zoning Code Section 20.58.030, the City hereby finds that the proposed project is not required to comply with Art in Public Places Program based on the following facts: (a) pursuant to Government Code Section 65913.4, the project is exempt from design review procedures contained in Section 20.58.070; and (b) full compliance with Planning and Zoning Code Section 20.58.030 would present a financial hardship towards project objective of meeting the goals of developing affordable housing. In lieu of compliance with the Art in Public Places Program under Planning and Zoning Code Section 20.58.030, the Developer hereby agrees to include a public art feature as part of the Improvements to be constructed hereunder. The Developer shall submit evidence to the City that the design and construction costs for the public art feature constructed as part of the Improvements is not less than Thirty-Five Thousand Dollars (\$35,000).

Section 6.22 Prohibition on Gas Fixtures. The Developer agrees that the Development shall be constructed to utilize all-electric fixtures, equipment, and appliances. The use of natural gas or other gas powered fixtures, equipment, and appliances shall be prohibited without the prior written approval of the City, which approval shall not be unreasonably conditioned, delayed or withheld.

ARTICLE 7. ONGOING DEVELOPER OBLIGATIONS

Section 7.1 Applicability. The conditions and obligations set forth in this Article 7 shall apply throughout the Term, unless a different period of applicability is specified for a particular condition or obligation.

Section 7.2 Use. The Developer hereby agrees that, for the entire Term, the Development will be used and continuously operated and maintained as multi-family affordable rental housing to be made available to and occupied by extremely-low, very-low, and low-income households at affordable housing cost (and other related uses) in conformity with this Agreement and the Regulatory Agreement. In the event of a foreclosure of a Senior Lien (or deed in lieu of foreclosure), then the City and the entity acquiring the Development at foreclosure (or through a deed in lieu of foreclosure) shall maintain the Development as multi-family affordable rental housing for extremely-low, very-low and low-income households.

Section 7.3 Records.

(a) The Developer shall maintain complete, accurate, and current records pertaining to the operation of the Development and that pertain to the surviving obligations under

this Agreement for a period of five (5) years after the creation of such records and shall permit any duly authorized representative of the City to inspect and copy such records. Such records shall include all invoices, receipts, and other documents related to expenditures of proceeds from the various replacement and operating reserve accounts. Records must be kept accurate and current.

(b) The City shall notify the Developer, of any records it deems insufficient. The Developer shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then the Developer shall begin to correct the deficiency within thirty (30) days and correct the deficiency as soon as reasonably possible.

Section 7.4 Audits. The Developer shall make available for examination at reasonable intervals and during normal business hours to the City all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit the City to audit, examine, and make excerpts or transcripts from such records. The City may make audits of any conditions relating to this Agreement.

Section 7.5 Maintenance Development.

(a) The Developer agrees to maintain all interior and exterior improvements, including landscaping, of the Development in good and sanitary condition and repair (and as to landscaping, in a healthy condition) consistent with quality affordable housing developments owned or operated by SAHA or SAHA Affiliates and in accordance with a Management Plan approved pursuant to Section 8.8 of this Agreement (including without limitation any landscape and signage plans), as the same may be amended from time to time, and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

(b) The Developer acknowledges the great emphasis the City places on quality maintenance to protect its investment and to provide quality low-income housing for area tenants and to ensure that City-assisted affordable housing projects are not allowed to deteriorate due to deficient maintenance. In addition, the Developer shall keep the Development free from all graffiti, and any accumulation of shopping carts, debris or waste material. The Developer shall promptly make all repairs and replacements necessary to keep the Development in good and sanitary condition and repair (and as to landscaping, in a healthy condition) consistent with quality affordable housing developments owned or operated by SAHA or SAHA Affiliates and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable materials.

(c) In the event that the Developer breaches any of the covenants contained in this Section and such default continues for a period of seven (7) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work

necessary to cure the default, or if a period longer than seven (7) and thirty (30) days is reasonably necessary to correct the deficiency, respectively, then the Developer shall begin to correct the deficiency within seven (7) and thirty (30) days, respectively, and correct the deficiency as soon as reasonably possible. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the Improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by the Developer to the City upon demand.

(d) The conditions and obligations set forth in this Section shall run with the Property and shall apply for the entire Term of this Agreement.

Section 7.6 Taxes and Assessments.

(a) Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to its respective portion of the Development or its respective leasehold interest in the Development; provided, however, that the Developer shall have the right to contest in good faith any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest. The conditions and obligations set forth in this Section shall run with the Property and shall apply for the entire Term of this Agreement.

(b) City acknowledges that the Developer may apply to the State Board of Equalization for a welfare exemption from property taxes under California Revenue and Taxation Code Section 214 for the Development.

Section 7.7 Hazardous Materials.

(a) The Developer may, at their sole cost and expense, engage their own environmental consultant to make such environmental site assessments or investigations of the Property with respect to possible contamination by hazardous materials as the Developer deems necessary, including any "Phase I" and/or "Phase II" investigations of the Property. Developer shall conduct any such environmental investigations as follows:

(i) Developer shall provide advance notice of any Phase I surveys or inspections of the Property.

(ii) Developer may not conduct any Phase II investigations unless the City has reviewed and approved Developer's proposed work plan.

(iii) Developer shall promptly deliver to the City a copy of all reports and assessments provided by the Developer's consultants

(iv) Developer shall, at its sole cost and expense, use its best efforts to cause its environmental consultants to agree that the City may rely on the contents of such reports and assessments through reliance letters.

(b) No Hazardous Materials Activities. The Developer hereby represents and warrants to the City that, at all times from and after the Close of Escrow, the Developer shall not cause or permit the Property, or the Improvements thereon, to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials, with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, use or maintenance of residential properties similar in nature to the Project, and used, stored and disposed of in compliance with Environmental Laws.

(c) Hazardous Materials Laws. The Developer hereby represents and warrants to the City that, at all times from and after the Close of Escrow, the Developer shall comply and cause the Property, and the Improvements thereon, to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

(d) Notices. The Developer hereby represents and warrants to the City that, at all times from and after the Close of Escrow, the Developer shall immediately notify the City in writing of: (i) the discovery of any Hazardous Materials on or under the Property; (ii) any knowledge by the Developer that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against the Developer, the Property, or the Improvements by any governmental entity or agency or any other person or entity relating to Hazardous Materials Claims; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property, that could cause the Property, or any part thereof to be designated as "border zone property" under the provisions of California law, or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Laws. The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

(e) Remedial Action. Without the City's prior written consent, which shall not be unreasonably withheld, the Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(f) Indemnity. Without limiting the generality of the indemnification set forth in Section 12.7 below, following the close of Escrow the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably selected by the City) the City, its governing board members, officers, representatives, agents, assigns and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but

not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (i) the failure of the Developer or any other person or entity to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development; (ii) the presence in, on or under the Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Development; and (iii) any activity carried on or undertaken on or off the Development, and whether by the Developer or any successor in title or any employees, agents, contractors or subcontractors of the Developer or any successor in title, or any third persons at any time occupying or present on the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Development. The foregoing indemnity shall further apply to any residual contamination on or under the Development, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

(g) No Limitation. The Developer hereby acknowledges and agree that the Developer' duties, obligations and liabilities under this Agreement, including, without limitation, under this Section, are in no way limited or otherwise affected by any information the City may have concerning the Development and/or the presence within the Development of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

Section 7.8 Management Plan and Procedures.

(a) No later than the date set forth in the Schedule of Performance, the Developer shall submit to the City an initial proposed Management Plan for the Development which shall identify the name and qualifications of a proposed management agent, and include a proposed management agreement and written guidelines or procedures for tenant selection, operation and management of the Development, and implementation of the income certification and reporting requirements of the Regulatory Agreement (collectively, the "Management Plan"). The City shall approve or disapprove the Management Plan in writing within fifteen (15) calendar days following the City's receipt of the complete Management Plan, which approval shall not be unreasonably denied. If the Management Plan is disapproved by the City, the City shall deliver a written notice to the Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer shall have fifteen (15) calendar days following the receipt of such notice to submit a revised Management Plan.

(b) The provisions of this Section relating to time periods for approval, disapproval, and resubmission of the new Management Plan shall continue to apply until the Management Plan has been approved by the City; provided, however, that if the City's reasonable approval of the Management Plan has not been obtained by the date set forth in the Schedule of Performance the City may terminate this Agreement. City approval of these

documents shall be a condition precedent to City executing the Ground Lease leasing the Property to the Developer.

Section 7.9 Management Agent; Periodic Reports.

(a) Management Agent. The Development shall at all times be managed by an experienced Management Agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing. For any change in the Management Agent, the Developer shall submit for the City's approval the identity of any proposed Management Agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Developer in writing. The City hereby approves SAHA Property Management as the initial Management Agent.

(b) Performance Review. The City reserves the right to conduct a periodic review of the management practices and financial status of the Development within thirty (30) days after each anniversary of the issuance of the Certificate of Completion. The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer shall cooperate with the City in such reviews.

(c) Books, Records and Reports. For purposes of such periodic reviews, the Developer and the Management Agent shall make available to the City for inspection all books and records with respect to the Development. In addition, the Developer shall provide the City with: (i) by not later than thirty (30) days prior to commencement of each calendar year, the annual budget for the upcoming calendar year; (ii) within ninety (90) days following the end of each calendar year, a report showing the actual income and expenditures with respect to the Development for the immediately preceding calendar year and the status of all reserve funds; and (iii) within one hundred twenty (120) days following the end of each calendar year, a copy of the Developer's federal income tax filings for the calendar year.

(d) Replacement of Management Agent. If, as a result of a periodic review, the City determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the requirements and standards of this Agreement, the Ground Lease or the Regulatory Agreement, the City shall deliver notice to the Developer of such operational issues which notice shall describe the management deficiencies with specificity along with the actions the City deems necessary to cure said deficiencies along with a period in which the deficiencies shall be cured. Within thirty (30) days of receipt by the Developer of such written notice, City staff and the Developer, and any partners of the Partnership, shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, City staff recommends in writing the replacement of the Management Agent, with the reasonable concurrence of the partners of the Partnership and the

Senior Lender, the Developer shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in subsection (a) above and approved by the City pursuant to subsection (a) above.

(e) Any contract for the operation or management of the Development entered into by the Developer shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a Developer Event of Default under Section 9.3 of this Agreement, and the City may enforce this provision through legal proceedings as specified in Article 9.

Section 7.10 Approval of Management Plan Modifications.

Pursuant to Section 7.8, the City is to review and approve the initial written Management Plan for the Development. Each year thereafter, within sixty (60) days of the end of the calendar year, the Developer shall submit to the City any proposed changes to the Management Plan. The City shall approve or disapprove the proposed changes to the Management Plan in writing within fifteen (15) calendar days following the City's receipt of the request to amend the Management Plan, which approval shall not be unreasonably denied. If the change to the Management Plan is disapproved by the City, the City shall deliver a written notice to the Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer shall have fifteen (15) calendar days following the receipt of such notice to submit a revised Management Plan modification in any way necessary to ensure that such policies comply with the provisions of this Agreement. The City's approval of the amendments to the Management Plan shall not be unreasonably withheld.

Section 7.11 Insurance Requirements.

(a) The Developer shall maintain the following insurance coverage throughout the Term of the City Loan written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII". If the Developer use existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Developer agrees to amend, supplement, or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

(b) Without in anyway affecting the indemnity herein provided and in addition thereto, the Developer shall secure and maintain the contract term the following types of insurance with limits as shown:

(i) Workers' Compensation/Employers Liability.

(1) Workers' Compensation A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Developer and all risks to such persons under this Agreement.

(2) If the Developer have no employees, it may certify or warrant to the City that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the City's Director of Risk Management.

(3) With respect to Developer that are non-profit corporations organized under California or federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

(ii) Comprehensive General Liability. General Liability Insurance covering all operations performed by or on behalf of the Developer providing coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000), per occurrence. The policy coverage must include:

- (1) Premises operations and mobile equipment.
- (2) Products and completed operations.
- (3) Broad form property damage (including completed operations).
- (4) Explosion, collapse, and underground hazards.
- (5) Personal injury.
- (6) Contractual liability.
- (7) \$2,000,000 general aggregate limit.

(iii) Comprehensive Automobile Liability.

(1) Primary insurance coverage must be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol I (any auto).

(2) The policy must have a combined single limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

(3) If the Developer is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy must have a

combined single limit of Two Million Dollars (\$2,000,000) for bodily injury and property damage per occurrence.

(4) If the Developer owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(iv) Builders' Risk/Property Insurance. Builders' Risk insurance during the course of construction, and upon Completion of Construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interests may appear. Flood insurance must be obtained if required by applicable federal regulations.

(v) Commercial Crime. Commercial crime insurance covering all officers and employees, for loss of City Loan proceeds caused by dishonesty, in an amount approved by the City, naming the City a Loss Payee, as its interests may appear.

(c) The Developer shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with the Developer or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, meeting all of the general requirements of subsections (e) and (f) below and naming the City as an additional insured. The Developer agree to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

(d) An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy must apply to bodily injury/property damage, personal injury/advertising injury and must include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage must also apply to automobile liability.

(e) The required insurance must be provided under an occurrence form, and the Developer shall maintain the coverage described in subsections (a) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit must be three times the occurrence limits specified above.

(f) Comprehensive General Liability and Comprehensive Automobile Liability insurance policies must be endorsed to name as an additional insured the City and its officers, agents, employees and members of the City Council. The additional insured endorsements must not limit the scope of coverage for the City to vicarious liability but must allow coverage for the City to the full extent provided by the policy. Such additional insured coverage must be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

(g) All policies and bonds are to contain (i) the agreement of the insurer to give the City at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such

policies are primary and non-contributing with any insurance that may be carried by the City; (iii) a provision that no act or omission of the Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

(h) Construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) in General Liability and Auto Liability coverage.

(i) The Developer shall require the carriers of required coverages to waive all rights of subrogation against the City, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Developer and the Developer' employees or agents from waiving the right of subrogation prior to a loss or claim. The Developer hereby waive all rights of subrogation against the City.

(j) All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the City.

(k) The Developer shall furnish Certificates of Insurance to the City Department administering the contract evidencing the insurance coverage prior to the Close of Escrow, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and the Developer shall maintain such insurance from the time the Developer commence performance of services hereunder until the completion of such services. Within fifteen (15) days following the close of Escrow, the Developer shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

(l) The Developer agree to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Developer and the City or between the City and any other insured or additional insured under the policy.

(m) Any and all deductibles or self-insured retentions in excess of Ten Thousand Dollars (\$10,000) shall be declared to and approved by the City's risk management agent.

(n) In the event that any policy of insurance required in this Section does not comply with the requirements, is not procured, or is canceled and not replaced, the City has the right but not the obligation or duty to obtain such insurance it deems necessary and any premiums paid by the City will be promptly reimbursed by the Developer or City disbursements to the Developer will be reduced to pay for the City purchased insurance.

(o) Insurance requirements are subject to periodic review by the City. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the

required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the City. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the City, inflation, or any other item reasonably related to the City's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. The Developer agree to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the City to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the City.

Section 7.12 Safety Conditions.

(a) The Developer acknowledge that the City places a prime importance on the security of City assisted projects and the safety of the tenants and surrounding community. The Developer agree to implement and maintain throughout the Term the following security measures in the Development:

(i) to the extent feasible employ defensible space design principles and crime prevention measures in the operation of the Development including but not limited to maintaining adequate lighting in parking areas and pathways; and

(ii) provide added security including dead-bolt locks and solid-core doors for every entry door in the Development.

(b) The City shall have the right to enter on the Property and/or contact the Albany Police Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the tenants and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition.

Section 7.13 Allowable Preferences. Subject to all applicable laws, including but not limited to fair housing laws, and the rules and regulations imposed by TCAC on the low income housing tax credit program, the Developer shall give a preference in the rental of any of the units in the Development to eligible households displaced by activity of the City and the former Redevelopment Agency of the City of Albany. The preferences stated in this Section are required by law and shall apply to the rentals of units in the Development throughout the Term of this Agreement.

Section 7.14 Marketing Plan.

(a) No later than six (6) months prior to the projected date of the Completion of Construction of the Improvements, Developer shall submit to the City for approval its plan for marketing the Development to income-eligible households as required pursuant to the Regulatory Agreement, including information on affirmative marketing efforts and compliance with fair housing laws (the "Marketing Plan").

(b) Upon receipt of the Marketing Plan, the City will promptly review the Marketing Plan and will approve or disapprove it within fifteen (15) business days after submission. If the Marketing Plan is not approved, Developer shall submit a revised Marketing Plan within fifteen (15) business days. Developer shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the City.

Section 7.15 Notice of Litigation.

(a) The Developer shall promptly notify the City in writing of any litigation related to the Development, and any litigation related to the Developer or SAHA for which the amount claimed or at issue is in excess of Fifty Thousand Dollars (\$50,000), and of any claims or disputes related to the Development that involve a material risk of litigation.

(b) The conditions and obligations set forth in this Section shall apply for the entire Term of this Agreement.

Section 7.16 Social Services.

(a) For the entire Term of this Agreement, the Developer shall contract with a service provider reasonably acceptable to provide social services to the households residing in the Development. To satisfy the requirements of this Section, the designated service provider shall be required to provide social services programs (the "Services Plan") that meet the rules and regulations imposed by TCAC and any and all Approved Lenders.

(b) Annual Operating Expenses, as defined in Section 1.1 above, shall include an annual sum for social services provided under the approved Services Plan subject to an annual increase that is equal to increase in CPI, or such other sum equal to the cost of all social services to be provided and included in the approved Financing Plan.

Section 7.17 Restrictions on Reserves. All funds in the operating reserve and replacement reserve shall continue to be held in reserve in a segregated interest bearing account. Notwithstanding anything to the contrary, the funds in the operating reserve and the replacement reserve shall remain and be property of the Development and no reserve funds may under any circumstances be: (a) released to the Partnership or any partners as cash flow; (b) used by the Developer to redeem the interest of any limited partner; or (c) used to fund a development buyout option, interest buyout option, development buyout price, interest buyout price, buyout price, sale administration fee, or any other fee or payment due as a result of any transfer under the partnership agreement; and (d) used for any other purpose other than to fund repairs, capital expenditures and other related costs approved by the City.

ARTICLE 8.
ASSIGNMENT AND TRANSFERS

Section 8.1 Definitions. As used in this Article, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the

Development or any part thereof or any interest therein or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer or any contract or agreement to do any of the same; or

(c) Any merger, consolidation, sale or lease of all or substantially all of the assets of the Developer; or

(d) The leasing of part or all of the Property or the Improvements thereon; provided, however, that leasing of the Units included within the Improvements to tenant occupants in accordance with the Regulatory Agreement.

Section 8.2 Purpose of Restrictions on Transfer. This Agreement is entered into for the purpose of development and operation of the Development and its subsequent use in accordance with the terms hereof. The Developer recognizes that the qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the development of the properties to the general welfare of the community;

(b) The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such development possible;

(c) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for construction of the Development and upon the continuing interest which the Developer will have in the Development to assure the quality of the use, operation and maintenance of the Development, which are deemed critical by the City;

(d) The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the Property;

(e) The fact that the Property is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement;

(f) The importance to the City and the community of the standards of use, operation and maintenance of the Property; and

(g) The Developer further recognize that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 8.3 Prohibited Transfers.

(a) Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer shall not make or create, or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the City.

(b) The limitations on Transfers set forth in this Section shall apply throughout the Term.

(c) Any Transfer made in contravention of this Section shall be void and shall be deemed to be a default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 8.4 Permitted Transfers.

(a) Transfers of Property. Notwithstanding the provisions of Section 8.3, the following Transfers related to the Property shall be permitted and are hereby approved by the City, subject to the requirements of Section 8.5.

(i) Any Transfer creating a Security Financing Interest permitted pursuant to the Approved Financing Plan;

(ii) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under Article 11 for the Property;

(iii) The leasing of residential units within the Development in accordance with the Regulatory Agreement;

(iv) The granting of easements or permits to facilitate the construction and operation of the Development, including but not limited those easements for public utilities and the Bike Trail Improvements.

(b) Transfer to Partnership. The City hereby approves a Transfer to the Partnership, and an assignment of this Agreement to the Partnership.

(c) Transfers to Tax Credit Investors. The City hereby approves a Transfer of a limited partnership interest in the Partnership to the Tax Credit Investor, or to an affiliate of the Tax Credit Investor (provided such affiliate provides documentation reasonably acceptable to the City that the affiliate has sufficient financial capability to provide the capital contributions set forth in the Financing Plan) and future transfers of such interest provided that: (i) the Partnership's partnership agreement provides for capital contributions of the limited partners consistent with Financing Plan and is first approved by the City in its reasonable discretion; (ii) all documents associated with the tax credit syndication of the Development are submitted to the City for approval prior to execution, which approval shall not be unreasonably withheld; and (iii) in subsequent transfers the Tax Credit Investor (or an affiliate of the Tax Credit Investor reasonably acceptable to the City) remains liable for all unpaid capital contributions. The Parties agree and acknowledge that SAHA or a City approved SAHA Affiliate shall remain the administrative general partner of the Partnership throughout the Lease Term. In the event a general partner of the Developer is removed by the limited partner of the Developer for cause

following default under the Developer's partnership agreement, the City hereby approves the transfer of the general partner interest to an entity selected by the limited partner and approved in advance and in writing by the City, which approval shall not be unreasonably withheld.

(d) Transfer to Limited Partner Interest. The City also hereby approves future Transfers of the limited partner interest provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the Developer's partnership agreement approved by the City; and (ii) in such Transfers, a wholly owned affiliate of the initial limited partner retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(e) Transfer to Affiliates. The City also hereby approves Transfer of the Property from the Developer to SAHA or a SAHA Affiliate, and an assumption of the City Loan by such transferee, provided that (i) the transferee expressly assumes the obligations of the Developer under this Agreement and the City Loan Documents, utilizing a form of assignment and assumption agreement to be provided by the City, and (ii) all funds maintained in the operating reserve, and the replacement reserve are transferred to the transferee with the Development and continue to be reserved solely to pay operating costs or replacement costs of the Development.

(f) Notwithstanding anything to the contrary, all funds maintained in operating or replacement reserves for the Development must be transferred to the transferee with and continue to be reserved solely to pay operating costs or replacement costs of the Development.

Section 8.5 Effectuation of Certain Permitted Transfers.

(a) No Transfer of this Agreement permitted pursuant to Section 8.4 shall be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing prepared by the City and in form recordable among the land records, shall expressly assume the obligations of the applicable Developer under this Agreement and agree to be subject to the conditions and restrictions to which such Developer is subject arising during this Agreement, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer.

(b) Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest shall have been acquired by, through or under a Security Financing Interest or shall have been derived immediately from any holder thereof shall not be required to give to City such written assumption until such holder or other person is in possession of the Property or entitled to possession thereof pursuant to enforcement of the Security Financing Interest.

(c) In the absence of specific written agreement by the City, no such Transfer, assignment or approval by the City shall be deemed to relieve either of the Developer or any other party from any obligations under this Agreement.

Section 8.6 Other Transfers with City Consent. The City may, in its sole discretion, approve in writing other Transfers as requested by either of the Developer. In connection with

such request, there shall be submitted to the City for review all instruments and other legal documents proposed to effect any such Transfer. If a requested Transfer is approved by the City such approval shall be indicated to the applicable Developer requesting the Transfer in writing. Such approval shall be granted or denied by the City within sixty (60) calendar days of receipt by the City of such Developer's request for approval of a Transfer. Upon such approval, if granted, the transferee, by an instrument in writing prepared by the City and in form recordable among the land records, shall expressly assume the obligations of such Developer under this Agreement and agree to be subject to the conditions and restrictions to which such Developer is subject arising during this Agreement, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer. If and to the extent the City grants consent to a Transfer under this Section, such consent shall be deemed to have been given to the assignment of the applicable lease without the need for any additional consent.

ARTICLE 9. DEFAULT AND REMEDIES

Section 9.1 General Applicability. The provisions of this Article shall govern the Parties' remedies for breach or failure of this Agreement.

Section 9.2 Fault of City.

(a) Except as to events constituting a basis for termination under Section 9.3, the following events each constitute a "City Event of Default" and a basis for the Developer to take action against the City:

(i) The City, without good cause, fails to lease the Property to the Developer within the time and in the manner set forth in Article 6 and the Developer are otherwise entitled by this Agreement to such conveyance; or

(ii) The City breaches any other material provision of this Agreement.

(b) Upon the happening of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the City fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the Developer shall be afforded all the following remedies: (1) terminating in writing this Agreement (provided, however, that the indemnification obligations survive such termination); and (2) prosecuting an action solely for specific performance. In no event shall the Developer be entitled to consequential damages for an uncured City Event of Default.

Section 9.3 Fault of Developer. Except as to events constituting a basis for termination under Section 9.2 and subject to the cure rights under Section 9.4, the following

events each constitute a "Developer Event of Default" as to the Developer whose act or inaction results in the Developer Event of Default and a basis for the City to take action only against such Developer and not against the other Developer:

(a) Failure of a Developer to pay all amounts due under this Agreement within the times and in the manner specified herein, following written notice by the City of such failure and ten (10) days opportunity to cure;

(b) Failure of a Developer to exercise good faith and diligent efforts to satisfy, within the time set forth in the Schedule of Performance and in the manner set forth in Article 6, one or more of the conditions precedent to the City's obligation to convey the leasehold interest in the Property to the Developer pursuant to the Ground Lease;

(c) Failure or refusal by the Developer to execute the Ground Lease within the time periods and under the terms set forth in Article 6;

(d) The Developer constructs or attempts to construct the Improvements in violation of Article 6;

(e) The Developer fails to commence or complete construction of the Improvements within the times set forth in Article 6, or abandons or suspends construction of the Improvements prior to completion of all construction;

(f) The Developer fails to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Agreement;

(g) There shall occur any default by the Developer declared by any lender under any loan document related to any loans, secured by a deed of trust on the Development and all cure periods provided by such loan document have expired without a remedy of the default and the default has not been waived by the lender;

(h) A Transfer by a Developer occurs, either voluntarily or involuntarily, in violation of Article 8;

(i) Any representation or warranty by the Developer contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made;

(j) A default occurs under the Ground Lease, the Leasehold Deed of Trust, the Promissory Note, or the Regulatory Agreement, as applicable;

(k) A court having jurisdiction shall have made or entered any decree or order: (i) adjudging the Developer, or any of the SAHA Affiliates which are general partners or members of a Developer, to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking its reorganization of the Developer, or any of the SAHA Affiliates that are general partners or members of a Developer, or seeking any arrangement for the Developer, or any of the SAHA Affiliates that are general partners or members in a Developer, under the bankruptcy law

or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer, or any of the SAHA Affiliates that are general partners or members in a Developer, in bankruptcy or insolvency or for any of their properties; or (iv) directing the winding up or liquidation of a Developer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or the Developer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive;

(l) The Developer, or any of the SAHA Affiliates that are general partners or members in a Developer, shall have assigned their assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within thirty (30) days after such event or prior to sooner sale pursuant to such sequestration, attachment, or execution;

(m) The Developer: (i) has the operation of its business voluntarily or involuntarily suspended by the State of California; (ii) voluntarily stops or terminates the operation of its business; or (iii) if the Developer is a partnership, the partnership shall have the operation of the partnership or voluntarily or involuntarily dissolved, suspended or terminated by the State of California; or

(n) There shall be filed any claim of lien (other than liens approved in writing by the City) against the Property or any part thereof, or any interest or right made appurtenant thereto, and the continued maintenance of said claim of lien or notice to withhold for a period of thirty (30) days without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to the City.

Section 9.4 Remedies Against Developer.

(a) Upon the happening of any of the above-described events in Section 9.3 (other than 9.3(a) which shall be subject to the cure period stated therein), the City shall first notify the applicable Developer causing the Developer Event of Default in writing of its purported breach, failure or act above described, giving such Developer in writing forty-five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty-five (45) days, to commence to cure such breach, failure, or act. In the event such Developer causing the Developer Event of Default fails to cure within said forty-five (45) days, or if such breach is of a nature that it cannot be cured within forty-five (45) days, such Developer causing the Developer Event of Default fails to commence to cure within said forty-five (45) days and diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the City shall be afforded all of its rights at law or in equity, including without limitation any or all of the following remedies:

(b) Developer Event of Default Prior to the Close of Escrow:

(i) Termination of this Agreement; provided, however, that the City's remedies pursuant to this Agreement, the indemnification provisions in this Agreement shall survive such termination.

(ii) Any of the remedies specified in Section 9.6.

(c) After the Close of Escrow:

(i) Termination of this Agreement and the Ground Lease, by written notice to the applicable Developer; provided, however, that the City's remedies pursuant to this Article 9 or any other City Document and the indemnification provisions of in this Agreement shall survive such termination;

(ii) Prosecuting an action for damages or specific performance;

(iii) Any of the remedies specified in Sections 9.5 and 9.6; and

(iv) Acceleration of the City Loan.

Section 9.5 Right to Cure at Developer's Expense. The City shall have the right to cure any monetary default by the Developer under a loan or grant in connection with the Development. However, if a Developer is in good faith contesting a claim of default under a loan or grant and the City's interest under this Agreement is not imminently threatened by such default, in the City's sole judgment, the City shall not have the right to cure such default. The Developer agrees to reimburse the City for any funds advanced by the City to cure a monetary default by the Developer upon demand therefore, together with interest thereon at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.

Section 9.6 Collateral Documents. If this Agreement is terminated pursuant to Section 9.4, subject to the rights of senior lenders, then the Developer shall promptly deliver to the City, within ten (10) days of such termination, copies of all plans and specifications for the Development, all permits and approvals obtained in connection with the Development, and all applications for permits and approvals not yet obtained but needed in connection with the Development. As applicable, the delivery of the Collateral Documents shall be accompanied by any updates to the Assignment Agreement, in form reasonably satisfactory to the City, of the Developer's right, title and interest in the Collateral Documents; provided however, that any use of the Collateral Documents by the City or any other person shall be without liability of any kind to the Developer and without any representation or warranty of the Developer or its employees as to the quality, validity, or usability of the Collateral Documents.

Section 9.7 Rights of Mortgagees. Any rights of the City under this Article shall not defeat, limit or render invalid any Security Financing Interest permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of Security Financing Interests related to the Development.

Section 9.8 Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and

each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 9.9 Waiver of Terms and Conditions. The City Manager may at the City Manager's discretion, as such discretion has been vested in the City Manager by action of the City Council, waive in writing any of the terms and conditions of this Agreement or the City Documents, without the Developer completing an amendment to this Agreement. No waiver of any default or breach by the Developer hereunder shall be implied from any omission by the City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to or of any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under the City Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the City in the exercise of any right, power, or remedy hereunder or under this Agreement, unless in the exercise of any such right, power, or remedy all obligations of the Developer to City are paid and discharged in full.

Section 9.10 Limited Liability of Tax Credit Investor. No Tax Credit Investor, nor any constituent partner, member, owner, officer, agent, employee, attorney or consultant of the Tax Credit Investor, including any person executing this instrument required under this Agreement, shall be liable personally under this Agreement (provided that the Tax Credit Investor is not acting as a general partner of the Developer). No recourse shall be had against any Tax Credit Investor, or any constituent partner, member, owner, officer, employee or agent, as such, of the Tax Credit Investor or any successor whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise (provided that the Tax Credit Investor is not acting as the general partner of the Developer). Any cure of any default by a Tax Credit Investor shall be accepted on the same terms and conditions as if tendered by the Developer.

ARTICLE 10. SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 10.1 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Developer's leasehold interest in the Property but only for the purpose of securing loans approved by the City pursuant to the approved Financing Plan for the Property or otherwise approved in writing by the City for the Property. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the City pursuant to the approved Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement

include all other appropriate modes of financing real estate construction, and land development. In no event shall a Security Financing Interest encumber the City's interest in the Property, unless approved by the City Council.

Section 10.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Ground Lease be construed so to obligate such holder. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

Section 10.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 7 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's leasehold interest in the Property or any portion thereof, and the Tax Credit Investor, a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to such improvements under this Agreement. The holder in that event must agree to complete or cause to be completed, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder or its designee properly completing such improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon completion and written request made to the City, to a Certificate of Completion from the City, in a form acceptable to the City.

Section 10.4 Failure of Holder to Complete Improvements. In any the holder of record of any Security Financing Interest, having first exercised its option to construct, has not proceeded diligently with construction within six (6) months after default by the Developer in Completion of Construction of the Improvements under this Agreement, the City shall be afforded those rights against such holder it would otherwise have against Developer under this Agreement.

Section 10.5 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the Improvements, and the holder has not exercised its option to complete the Development called to be constructed on the Property, the City may cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Property or any portion thereof to the extent of such costs and disbursements. The City agrees that such lien

shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.

Section 10.6 Right of City to Satisfy Other Liens. After the conveyance of the leasehold estate to the Property or any portion thereof and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property or any portion thereof, the City shall have the right to satisfy any such lien or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 10.7 Holder to be Notified. The provisions of this Article shall be incorporated into the relevant deed of trust or mortgage evidencing each Security Financing Interest to the extent deemed necessary by, and in form and substance reasonably satisfactorily to the City, or shall be acknowledged by the holder of a Security Financing Interest prior to its coming into any security right or interest in the Property.

Section 10.8 Estoppel Certificates. Either the Developer or the City, may at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (a) this Agreement is in full force and effect and binding obligation of the Parties; (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (c) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, such notice shall describe the nature and amount of any such default. A party receiving a request hereunder shall execute and return such certificate within twenty (20) days following receipt thereof. The City Manager is authorized to execute any such estoppel certificate requested by a Developer hereunder.

ARTICLE 11. REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 11.1 Developer Representations and Warranties. The Developer hereby represents and warrants, to the City as follows:

(a) Good Standing. The Developer is a duly organized, validly existing entity and is in good standing under the laws of the State of California and has the power and authority to lease the Property and carry on its business as now being conducted.

(b) Corporate Authority. The Developer has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of each Developer, and all actions required under such

Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or City whatsoever binding on a Developer, or any provision of the organizational documents of such Developer, or will conflict with or constitute a breach of or a default under any agreement to which a Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of a Developer, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or City.

(g) Pending Proceedings. No Developer is in material default under any law or regulation or under any order of any court, board, commission or City whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of a Developer, threatened against or affecting such Developer, at law or in equity, before or by any court, board, commission or City whatsoever which might, if determined adversely to the Developer, materially affect such Developer's ability to develop their respective portions of the Development.

(h) Title to Property. Upon the recordation of the Memorandum of Ground Lease, the Developer will have good and marketable leasehold title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the City or approved in writing by the City.

(i) Financial Statements. The financial statements of and other financial data and information furnished by the Developer to the City fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of a Developer from that shown by such financial statements and other data and information.

(j) Sufficient Funds for Development. The Developer holds, or prior to closing will hold, sufficient funds or binding commitments for sufficient funds to obtain the leasehold interest in the Property, and complete the construction of the Improvements in accordance with this Agreement.

(k) Taxes. From and after the Developer's acquisition of a leasehold interest in the Property, the Developer will timely file all federal and other material tax returns and reports required to be filed, and will timely pay all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon it or its income or its interest in the Property, otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against the Developer that could, if made, be reasonably expected to have a material adverse effect upon the, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Developer, taken as a whole, which would be expected to result in a material impairment of the ability of the Developer to perform under any loan document to which it is a party, or a material adverse effect upon the legality, validity, binding effect or enforceability against the Developer of this Agreement or any other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement.

Section 11.2 Warranties. The City expresses no warranty or representation to the Developer as to fitness or condition of the Property for the building or construction to be conducted thereon.

Section 11.3 Effect of Representations and Warranties. All of the representations and warranties made by the Developer in this Agreement shall be true and correct in all material respects and throughout the Term of this Agreement. The Developer shall indemnify and defend the City and its board members, employees, officers, directors, representatives, and agents against and hold the City, and its board members, employees, officers, directors, representatives, agents, assigns and employees harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, that may be suffered or incurred by the City if any representation or warranty made by the Developer in this Agreement was untrue or incorrect in any material respect when made or that may be caused by any breach of the Developer of any such representation or warranty. The foregoing indemnity shall survive the termination or expiration of this Agreement.

ARTICLE 12. GENERAL PROVISIONS

Section 12.1 Notices, Demands and Communications. Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested or delivered personally, to the principal office of the City and the Developer as follows:

City:

City of Albany
1000 San Pablo Avenue
Albany, CA 94706
Attn: City Manager

with a copy to:

Goldfarb & Lipman, LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Rafael Yaquian

Developer:

Satellite Affordable Housing Associates
1385 Alcatraz Avenue
Berkeley, CA 94703
Attn: Chief Executive Officer

with a copy to:

Gubb and Barshay, LLP
505 14th St, Suite 450
Oakland, CA 94612
Attn: Scott Barshay

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section.

Section 12.2 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 12.3 Forced Delay. 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; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather or soils conditions which, in the opinion of the Developer' contractor, will necessitate delays; inability to secure necessary labor, materials or tools; acts of the other party; acts or failure to act of any public or governmental City or entity (other than the acts or failure to act of the City); or any other causes (other than the Developer's inability to obtain financing for the Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) business days from the date the party seeking the extension first discovered the cause and such

extension of time is not rejected in writing by the other party within ten (10) business days of receipt of the notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agreed to by the Parties in writing.

Section 12.4 Inspection of Books and Records. Upon request, the Developer shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine the Developer's compliance with the terms of this Agreement. The Developer also has the right at all reasonable times to inspect the books, records and all other documentation of the City pertaining to its obligations under this Agreement.

Section 12.5 Provision Not Merged with Lease. None of the provisions of this Agreement are intended to or shall be merged by the Ground Lease or any lease transferring title to any real property which is the subject of this Agreement from City to the Developer or any successor in interest, and any such leases shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 12.6 Title of Parts and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 12.7 General Indemnification. The Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its directors, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developer's performance or non-performance under this Agreement, or any other agreement executed pursuant to this Agreement, or arising out of acts or omissions of any of the Developer's contractors, subcontractors, or persons claiming under any of the aforesaid, except as directly caused by the City's willful misconduct or gross negligence. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 12.8 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 12.9 No Brokers. Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee except as agreed to in writing by the City and the Developer. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 12.10 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 12.11 Venue. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of Alameda.

Section 12.12 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto except that there shall be no Transfer of any interest by any of the Parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. However, on the termination of this Agreement, such covenants and restrictions shall expire. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases the Property from the requirements of this Agreement.

Section 12.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 12.14 Time of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

Section 12.15 Action by the City. Except as may be otherwise specifically provided in this Agreement or any other of the City Documents, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement or any other of the City Documents, such action shall be given, made, taken, refused, denied or withheld by the City Manager, at the City Manager's reasonable discretion (unless some other standard is expressly stated), or by any person who shall have been designated in writing to the Developer by the City Manager, without further approval by the City Council. Any such action shall be in writing.

Section 12.16 Complete Understanding of the Parties. This Agreement is executed in three (3) duplicate originals each of which is deemed to be an original. This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement.

Section 12.17 Entry by the City. The Developer shall permit the City, through its officers, agents, or employees, at all reasonable times to enter into the Development: (a) to

inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement; and (b) following Completion of Construction, to inspect the ongoing operation and management of the Development to determine that the same is in conformance with the requirements of this Agreement. The Developer acknowledges that the City is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the City therefore. Any inspection by the City during the construction is entirely for its purposes in determining whether the Developer are in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon their own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

Section 12.18 Amendments. Except as permitted under Section 12.19 below, no alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties and approved by the City Council.

Section 12.19 Operating Memoranda.

(a) The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "Operating Memorandum", and collectively, "Operating Memoranda") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof.

(b) Operating Memoranda may be approved and executed on the City's behalf by the City Manager, or the City Manager's designee. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 12.18 hereof and must be approved by the City Council.

Section 12.20 Multiple Originals, Complete Understanding of the Parties. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts. This Agreement and the attached Exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement.

Section 12.21 Recordation of Agreement. A memorandum of this Agreement shall be recorded in the Official Records of the City at the time and in the manner specified in this Agreement.

Section 12.22 Mutual Cooperation. The City and the Developer shall mutually cooperate with one another to facilitate the development of the Property as contemplated by this Agreement.

Section 12.23 Survival Clause and Termination of Covenants. The recordation of the Certificate of Completion for the Development, pursuant to the terms of Section 6.13 above, shall be conclusive evidence that the covenants in this Agreement with respect to the obligations of the Developer to construct the Development described in this Agreement and the dates for the beginning and completion thereof have been met; provided, however, such certification shall not be conclusive evidence regarding Developer's satisfaction of the prevailing wage requirements of Section 6.10 above.

[Signature Page Follows]

DRAFT

IN WITNESS WHEREOF, the City, the Grantee and the Developer have executed this Agreement in triplicate on or as of the date first above written.

DEVELOPER:

Satellite Affordable Housing Associates, a California
nonprofit public benefit corporation

By: _____

Susan Friedland, Chief Executive Officer

CITY:

CITY OF ALBANY, a California charter City

By: _____

Nicole Almaguer, City Manager

APPROVED AS TO LEGAL FORM:

By: _____
Rafael Yaquian, City Attorney

EXHIBIT A-1

LEGAL DESCRIPTION OF THE PROPERTY

The land is situated in the State of California, County of Alameda, City of Albany and is described as follows:

DRAFT

EXHIBIT A-2

CONCEPTUAL SITE PLAN

DRAFT

EXHIBIT B

SCHEDULE OF PERFORMANCE

[Insert Schedule of Performance]

DRAFT

EXHIBIT C

APPROVED FINANCING PLAN

[Insert Financing Plan]

DRAFT

EXHIBIT D

FORM OF GROUND LEASE

DRAFT

EXHIBIT E

FORM OF REGULATORY AGREEMENT

DRAFT

EXHIBIT F

FORM OF PROMISSORY NOTE

DRAFT

EXHIBIT G

FORM OF LEASEHOLD DEED OF TRUST

EXHIBIT H

MEMORANDUM OF DDA

EXHIBIT I

MEMORANDUM OF GROUND LEASE

EXHIBIT J

FORM OF RESIDUAL RECEIPTS REPORT

EXHIBIT K

FORM OF CERTIFICATE OF COMPLETION

EXHIBIT L

FORM OF NOTICE OF AFFORDABILITY RESTRICTIONS

EXHIBIT M

FORM OF BICYCLE PATH EASEMENT

EXHIBIT N

BIKE TRAIL IMPROVEMENTS
PATH DETAIL

EXHIBIT O

FORM OF UTILITY EASEMENTS

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Albany, State of California, and is described as follows:

Portions of Calhoun Street, Washington Avenue (now Bayview Street), Arthur Street, Pierce Street, and Blocks 1, 2, 3, and 4 of that "Amended Map of Sunset Terrace, Oakland Twp., Alameda County, California", filed April 8, 1907 in Book 22 of Maps, Page 68, Alameda County Records; and also, those portions of those certain parcels of land described in the Deeds to the State of California recorded in the County of Alameda, State of California as follows:

Recording Date	Book	Page
December 24, 1934	3130	220
February 11, 1938	3569	404
December 17, 1943	4467	162
March 12, 1957	8309	311

and more particularly described as a whole as follows:

Commencing at the Southerly terminus of that certain course described as "N. 21° 17' 15" W., 492.43 feet" in Parcel 6 in that certain instrument entitled "Relinquishment of State Highway in the City of Albany, Road IV-Ala-69, 7-Alb, Relinquishment No. 22036", recorded October 9, 1961 in Reel 425 at Image 832, Official Records of Alameda County; thence along the general Westerly line of said Parcel 6, the following five (5) courses: (1) from a tangent that bears S. 21° 17' 15" E. along a curve to the right with a radius 483.00 feet, through an angle of 29° 03' 41", an arc length of 244.99 feet; (2) S. 07° 46' 26" W, 96.79 feet; (3) along a tangent curve to the left with a radius of 317.00 feet, through an angle of 21° 04' 28", an arc length of 116.60 feet; (4) S. 13° 18' 02" E., 237.80 feet; and (5) S. 11° 24' 17" E., 166.05 feet to the Southeasterly corner of Lot 24 of said Block 3; thence leaving said general Westerly line, S. 76° 50' 00" W. along the Southerly line of last said Lot 24, a distance of 79.10 feet to a point in the Northeasterly prolongation of the Northwesterly line of the parcel of land described in Deed (State Director's Deed No. 21-DD), recorded July 10, 1964 in Reel 1256, at Image 452, Official Records of Alameda County, said point being the most Easterly corner of the parcel of land as described in the Deed to State of California, recorded March 28, 1957 in Book 8324, Page 361, Official Records of said County; thence along said Northeasterly prolongation and said Northwesterly line, S. 24° 54' 56" W., 317.59 feet to the Northeasterly corner of Lot 11 of said Block 4; thence along the general Easterly lines of said Lot 11, and Lots 10, 9, and 8 of last said Block, S. 13° 10' 00" E., 99.99 feet to the Southeasterly corner of last said Lot 8; thence along the Southerly line of last said Lot 8, S. 76° 50' 00" W., 103.00 feet to the easterly line of Cleveland Avenue (50 feet wide) of said Amended Map of Sunset Terrace; thence along said Easterly line of said Cleveland Avenue, N. 10° 26' 30" W., 260.24 feet to the beginning of a non-tangent curve; thence from a tangent that bears N. 15° 42' 00" E., along said curve to the left with a radius of 4535.00 feet, through an angle of 8° 19' 10", an arc length of 658.48 feet to the beginning of a compound curve; thence along last said curve to the left with a radius of 1885.00 feet, through an angle of 9° 11' 25", an arc length of 302.36 feet; thence N. 48° 32' 08" E., 107.61 feet to the point of commencement.

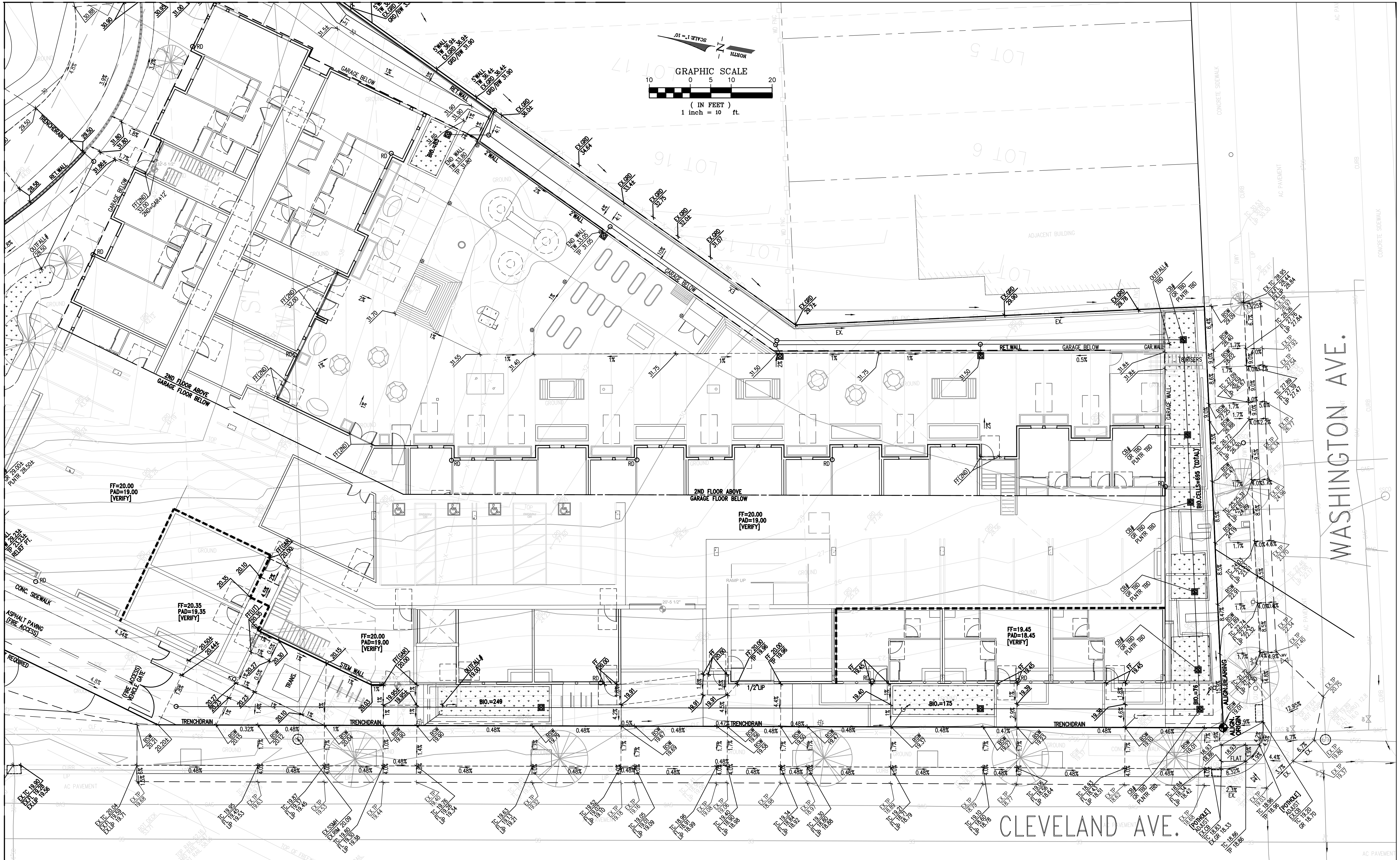
Excepting therefrom, those portions of said Calhoun Street, Washington Avenue (now Bayview Street), Arthur Street, and Pierce Street, lying within the above described 4.453 acres parcel.

Together with all right, title and interest of Grantor in and to those portions of said Calhoun Street, Washington Avenue (now Bayview Street), Arthur Street, and Pierce Street, lying within said 4.453 acres parcel.

APN: 066-2760-024-01

EXHIBIT A-2

CONCEPTUAL SITE PLAN



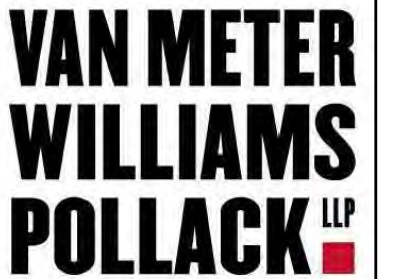
Date:	AUGUST 2019	Job No.:	18144A10
Scale:	1" = 10'	Drawing No.:	MASTER-18144A10
Drawn By:	C.W.	Plot Date:	09/23/2019
Checked By:	J.L.		

PRELIMINARY
 GRADING PLAN:
 ELEVATIONS

C-4.1

Seal:

Luk and Associates
 Civil Engineering
 Land Planning
 Land Surveying
 738 Alfred Nobel Drive
 Hercules, CA 94547
 Phone (510) 724-3388
 Fax (510) 724-3383





MATCHLINE
RIGHT-BELOW

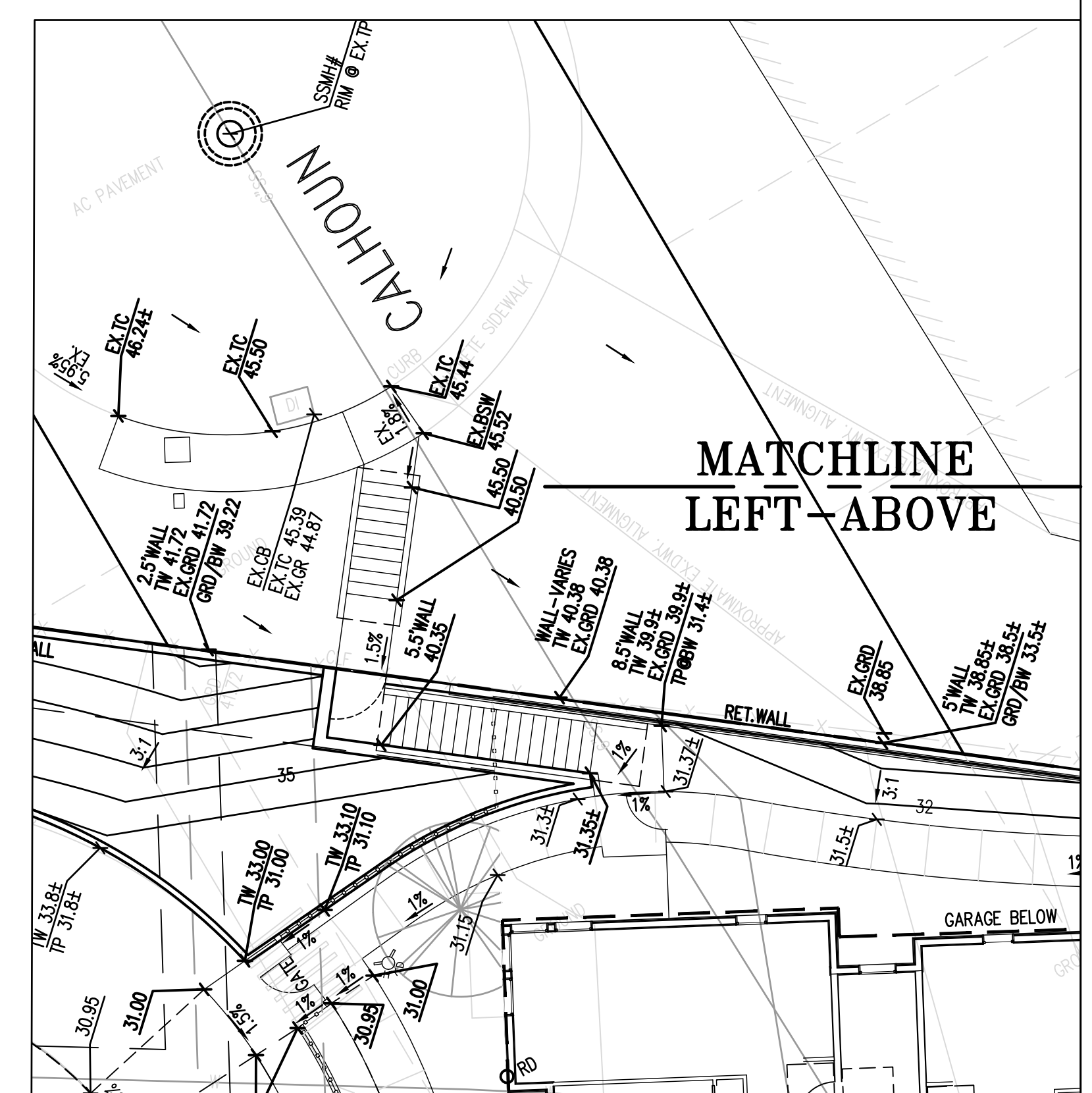
MATCHLINE
C-4.1

EARTHWORK NOTES:

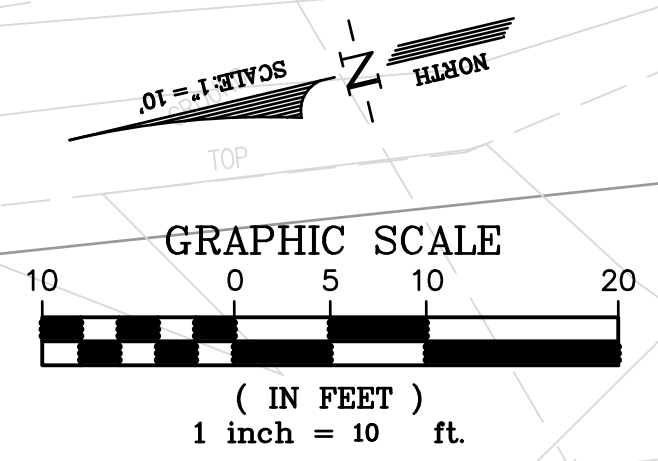
ANALYSIS PERFORMED:
DATE: 09/19/2019

EARTHWORK QUANTITIES:
GROSS CUT = 21,272 CY
GROSS FILL = 102 CY
NET (CUT) = 21,170 CY

1. CONTRACTOR SHALL BE RESPONSIBLE FOR PERFORMING INDEPENDENT QUANTITY ANALYSIS PRIOR TO BIDDING
2. ANALYSIS DOES NOT ACCOUNT FOR FOUNDATION SECTIONS, PAVEMENT SECTIONS, BIO-PLANTER SECTIONS, TRENCH SPOILS, FOOTINGS, OR SOIL-MITIGATION/OVER-EXCAVATION WORK. ESTIMATE IS FOR A ROUGH APPROXIMATION OF CUT/FILL QUANTITIES SOLEY FOR THE PURPOSES OF THE PRELIMINARY PLANNING PHASE.
- 3.



MATCHLINE
LEFT-ABOVE



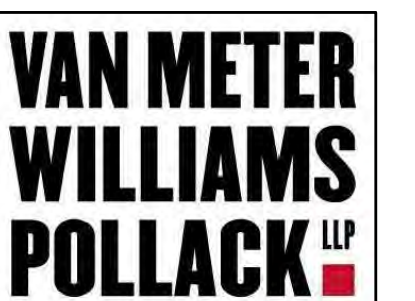
ALBANY FAMILY HOUSING
08/12/2019 | SATELLITE AFFORDABLE HOUSING ASSOCIATES

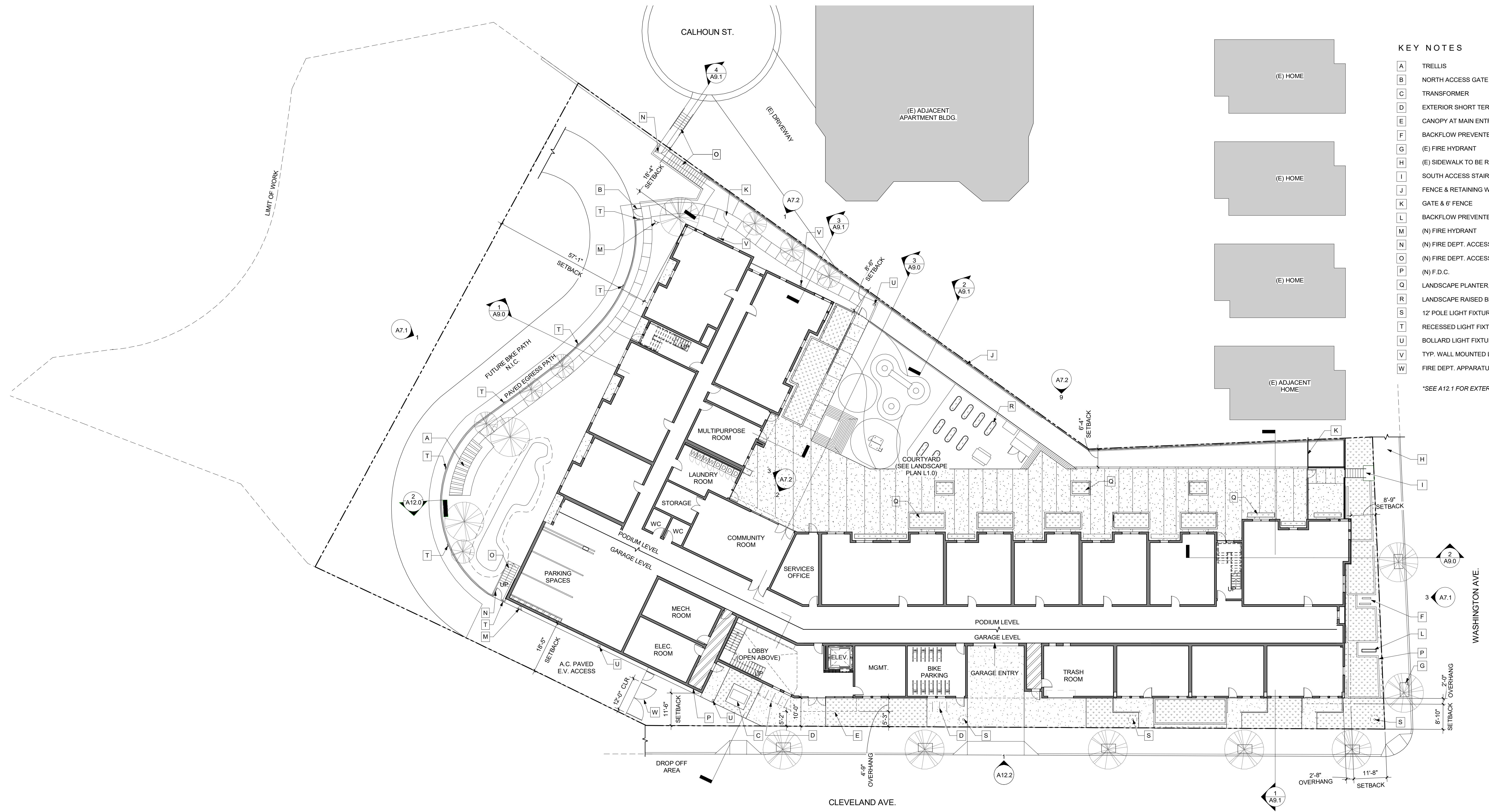
Date: AUGUST 2019	Job No.: 18144A10
Scale: 1" = 10'	Drawing No.: MASTER-18144A10
Drawn By: C.W.	Plot Date: 09/23/2019
Checked By: J.L.	

PRELIMINARY
GRADING PLAN:
ELEVATIONS
C-4.2

Seal:

Luk and Associates
Civil Engineering
Land Planning
Land Surveying
738 Alfred Nobel Drive
Hercules, CA 94547
Phone (510) 724-3388
Fax (510) 724-3383





- KEY NOTES**
- A TRELLIS
 - B NORTH ACCESS GATE TO COURTYARD
 - C TRANSFORMER
 - D EXTERIOR SHORT TERM BICYCLE PARKING
 - E CANOPY AT MAIN ENTRY
 - F BACKFLOW PREVENTER
 - G (E) FIRE HYDRANT
 - H (E) SIDEWALK TO BE REPLACED
 - I SOUTH ACCESS STAIR TO COURTYARD
 - J FENCE & RETAINING WALL (6' HEIGHT)
 - K GATE & 6' FENCE
 - L BACKFLOW PREVENTER (FIRE WATER LINE)
 - M (N) FIRE HYDRANT
 - N (N) FIRE DEPT. ACCESS GATE
 - O (N) FIRE DEPT. ACCESS STAIR
 - P (N) F.D.C.
 - Q LANDSCAPE PLANTER, TYP
 - R LANDSCAPE RAISED BED, TYP
 - S 12' POLE LIGHT FIXTURE (A)'
 - T RECESSED LIGHT FIXTURE (B)'
 - U BOLLARD LIGHT FIXTURE (C)'
 - V TYP. WALL MOUNTED LIGHT FIXTURE (D)'
 - W FIRE DEPT. APPARATUS ACCESS GATE
- *SEE A12.1 FOR EXTERIOR LIGHT FIXTURES INFO

1 SITE PLAN
A1.1 SCALE: 1/16" = 1'-0"



ALBANY FAMILY HOUSING | ARCHITECTURAL SITE PLAN

ALBANY, CA | 09/20/2019 | SATELLITE AFFORDABLE HOUSING ASSOCIATES

A1.1

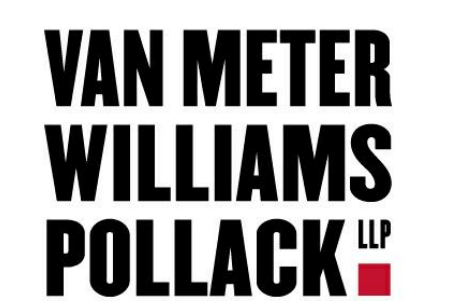


EXHIBIT B

SCHEDULE OF PERFORMANCE

Milestone	Performance Deadline
1. <u>Organizational Documents</u> Developer shall furnish organizational documents to the City.	Within sixty (60) days following execution of this Agreement.
2. <u>Insurance Requirements</u> Developer shall furnish to the City the type and amounts of insurance specified in Section 7.11 of the Agreement.	Within sixty (60) days following execution of this Agreement.
3. <u>Tax Credits</u> Developer shall prepare an application to TCAC for the Tax Credits	After all public financing is committed for the development and subdivision has occurred.
4. <u>Evidence of Financing</u> Developer shall submit an update to the Approved Financing Plan along with copies of all required funding commitments, including a preliminary tax credit reservation and an executed commitment letter from an equity investor.	No later than three (3) years following execution of this Agreement with the ability to extend for an additional two (2) years provided the Developer is not in default under this agreement.
5. <u>Construction Contract</u> Developer shall submit to the City for its limited approval the proposed construction contract for the Development	Prior to construction loan closing.
6. <u>Permits</u> Developer shall obtain all permits and Government Approvals required to construct the project	Prior to construction loan closing.
7. <u>Close of Escrow</u>	Prior to construction loan closing.

<p>The City shall convey leasehold title to the site to Developer, and Developer shall accept such conveyance.</p>	
<p>8. <u>Commencement of Construction</u> Developer shall commence construction of the Improvements and Bike Trail Improvements no later than this date.</p>	<p>Within six (6) months following submission of Evidence of Financing</p>
<p>9. <u>Management Plan</u> Developer shall submit to the City an initial proposed Management Plan for the Development</p>	<p>Six (6) months prior to the Completion of Construction.</p>
<p>10. <u>Marketing Plan</u> Developer shall submit to the City for approval the marketing plan for the Development.</p>	<p>Six (6) months prior to the Completion of Construction</p>
<p>11. <u>Completion of Construction</u> Developer shall complete the construction of the Improvements and Bike Trail Improvements no later than this date.</p>	<p>Within two (2) years following Commencement of Construction.</p>

GROUND LEASE

By and Between

THE CITY OF ALBANY

and

[SAHA Entity Name] , L.P.

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GROUND LEASE

THIS GROUND LEASE (the "Lease") is entered into as of _____, 20__ by and between the City of Albany, a charter city (the "City") and [SAHA Entity Name], L.P., a California limited partnership (the "Lessee"), with reference to the following facts, purposes, and understandings.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Lease. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The City, as the housing successor to the former Albany Redevelopment Agency pursuant to Health & Safety Code Section 34176(a), owns a site of approximately .9 acres located at Cleveland Avenue and Washington Street in the City of Albany, California, as further described in the attached Exhibit A (the "Property").

C. The Lessee and City entered into that certain Land Disposition, Development and Funding Agreement dated as of October 29, 2020, as such may be amended from time to time (the "Disposition Agreement"), pursuant to which City agreed to lease the Property to Lessee and the Lessee agreed to develop the Property.

D. In accordance with the Disposition Agreement and this Lease, the Lessee shall develop and operate on the Property a sixty-two (62) unit, including one (1) manager's unit, multifamily rental housing development affordable to Extremely Low Income Households, Very Low Income Households and Low Income Households.

E. The City desires to lease the Property to the Lessee, and the Lessee desires to lease the Property from City, for a term specified in this Lease.

WITH REFERENCE TO THE FACTS RECITED ABOVE, City and the Lessee (collectively the "Parties") agree as follows:

ARTICLE 1. DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

The following terms shall have the following meanings in this Lease:

(a) "Additional Rent" means any payments due pursuant to Section 4.5 or Section 5.5.

(b) "SAHA" means Satellite Affordable Housing Associates, a California nonprofit public benefit corporation.

(c) "Approved Lenders" means all of the lenders providing the Approved Loans to the Lessee and their designees, nominees, successors and assigns.

(d) "Approved Loan Documents" means all documents executed by the Lessee evidencing or securing the Approved Loans.

(e) "Approved Loans" means the loans contained in the Financing Plan submitted to City by the Lessee as required by the Disposition Agreement and approved by City, obtained by the Lessee in connection with and secured by the Development and approved in writing by City.

(f) "Authorized Officers" means, in the case of City, its Executive Officer, and in the case of the Lessee, the Chief Executive Officer of SAHA, the general partner of the Lessee, or such other individual as may be designated in writing by Lessee with proper authority to bind the Partnership. As of the date of this Lease, the Chief Executive Officer of SAHA is Susan Friedland.

(g) "Commencement Date" means the date of the Closing as defined in the Disposition Agreement.

(h) "City" has the meaning set forth in the first paragraph of this Agreement.

(i) "City Loan" means the loan in the approximate amount of Five Million Fifty-Six Thousand and Ninety-Four Dollars (\$5,056,094) made from City to the Lessee pursuant to the Disposition Agreement.

(j) "Bike Trail Improvement" means the interior portion of the building in the Development designated for use as a bike trail.

(k) "Development" means the Improvements and the Lessee's leasehold interest in the Property.

(l) "Development Documents" means all construction documentation prepared by the Lessee or on the Lessee's behalf and approved by City pursuant to the Disposition Agreement.

(m) "Disposition Agreement" shall have the meaning given in Recital C. The Disposition Agreement is incorporated herein by this reference.

(n) "Event of Default" shall have the meaning specified in Section 10.1.

(o) "Extremely Low Income Household" means a household with an Adjusted Income that does not exceed the qualifying limits for extremely low income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HUD.

(p) "Financing Plan" means the Financing Plan approved by City pursuant to the provisions of the Disposition Agreement.

(q) "Foreclosure Transferee" means a transferee who acquires the Lessee's interest in this Lease and the Development through the exercise of remedies (such as foreclosure or a deed in lieu of foreclosure) pursuant to Approved Loan Documents.

(r) "Hazardous Materials" means any substance, material, or waste which is: (1) defined as a "hazardous waste", "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) mold; (7) MTBE; or (8) determined by California, federal or local government authority to be capable of posing a risk of injury to health, safety or property. Without limiting the foregoing, Hazardous Materials means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Hazardous Materials Laws including any federal, state or local environmental statute, regulation or ordinance presently in effect that may be promulgated in the future, as such as statutes, regulations and ordinances may be amended from time to time.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or typically used in household activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health & Safety Coded Section 25249.8 *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Improvements, including, but not limited to, alcoholic beverages, aspirin, tobacco products, Nutrasweet and saccharine, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws.

(s) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

(t) "Improvements" means the sixty-two (62) housing units and appurtenant improvements to be constructed on the Property by the Lessee, but excluding the Bike Trail Improvements.

(u) "Investor" means _____, or such other Investor as reasonably approved by City.

(v) "Lease" means this Ground Lease.

(w) "Lease Term" means the term of this Lease, which shall commence on the Commencement Date and shall terminate ninety-nine (99) years after the Commencement Date.

(x) "Lease Year" means a period of twelve (12) full calendar months. The first Lease Year shall begin on the Commencement Date. Each succeeding Lease Year shall commence on the anniversary of the Commencement Date.

(y) "Lessee" means [SAHA Entity Name] , L.P., a California limited partnership, and its permitted successors and assigns.

(z) "Low Income Household" means a household with an Adjusted Income that does not exceed the qualifying limits for lower income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HUD.

(aa) "Management Plan" shall have the meaning specified in Section 4.14 of this Lease and Section 7.8 of the Disposition Agreement.

(bb) "Median Income" means the median gross yearly income, adjusted for actual household size as specified herein, in City of Albany, California as determined by the California Department of Housing and Community Development.

(cc) "Memorandum of Lease" means the memorandum of ground lease substantially in the form attached to the Disposition Agreement as Exhibit I.

(dd) "Official Records" means the Official Records of Alameda County, California.

(ee) "Other Households" means a household earning not greater than ninety percent (90%) of Median Income.

(ff) "Parties" means City and the Lessee.

(gg) "Party" means any one of City or Lessee.

(hh) "Preliminary Title Report" means that certain title report dated _____, 20__ issued by Old Republic Title Company a copy of which is attached as Exhibit C.

(ii) "Property" means the property more particularly described in the attached Exhibit A.

(jj) "Reciprocal Easement Agreement" means that certain easement agreement by and between the Lessee and the City providing for pedestrian and bicycle access to the Trail Improvements.

(kk) "Regulatory Agreement" means that Regulatory Agreement and Declaration of Restrictive Covenants to be entered into by City and the Lessee substantially in the form attached to the Disposition Agreement as Exhibit D.

(ll) "Rent" means the capitalized rent payment made to City by the Lessee in the amount set forth in Section 2.5.

(mm) "Resident Services Budget" shall have the meaning specified in Section 4.15 of this Lease and Section 7.17 of the Disposition Agreement.

(nn) "Resident Services Plan" shall have the meaning specified in Section 4.15 of this Lease and Section 7.17 of the Disposition Agreement.

(oo) "Transfer" is defined in Section 8.1 of this Lease.

(pp) "Very Low Income Households" means a household whose income does not exceed the qualifying limits for a very low income household as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, adjusted for assumed household size.

Section 1.2 Exhibits.

The following exhibits are attached to and made part of this Lease:

Exhibit A Legal Description of the Property
Exhibit B Insurance Requirements
Exhibit C Preliminary Title Report

ARTICLE 2.
LEASE OF THE PROPERTY; PAYMENT OF RENT;
OWNERSHIP OF IMPROVEMENTS

Section 2.1 Lease of the Property.

The City hereby leases the Property to the Lessee, and the Lessee hereby leases the Property from City, pursuant to the terms of this Lease.

(a) The Parties shall cause the Memorandum of Lease to be recorded against the Property in the Official Records substantially in the form attached to the Disposition Agreement as Exhibit I.

(b) The closing costs associated with execution of this Lease and recordation of the Memorandum of Lease including, but not limited to recording charges, county documentary transfer tax, and conveyance taxes (if any) and the cost of the Lessee's title insurance policy shall be borne by the Lessee. Each Party shall bear its own attorneys' fees and costs.

Section 2.2 Use.

Subject to the provisions of this Lease, the Lessee shall use the Property for the redevelopment thereof and for the construction, development, maintenance, and operation of the Improvements and all activities related thereto in accordance with the restrictions and requirements set forth in Article 4 hereof.

Section 2.3 Possession.

The City agrees to and shall provide possession of the Property to the Lessee immediately following the Commencement Date. To the best of City's knowledge, the Property is subject only to the encumbrances listed in the Preliminary Title Report and such encumbrances approved by the Parties and recorded concurrently with the Memorandum of Lease. The City shall convey the Property to the Lessee in the physical condition set forth in the Disposition Agreement.

Section 2.4 Lease Term.

Unless earlier terminated pursuant to the provisions of this Lease, the Lease Term shall be for the period commencing on the Commencement Date and terminating at midnight (12:00 a.m.) on the day immediately preceding the ninety-ninth (99th) anniversary of the Commencement Date.

Section 2.5 Payment of Rent.

(a) The full ground rent ("Rent") due and owing from the Lessee to City for the initial term of this Lease is approximate amount of Four Million Six Hundred and Fifty Thousand Dollars (\$4,650,000), which has been pre-paid in full concurrently with the execution of this Lease.

(b) Additional Rent due pursuant to Section 4.5 or 5.4 shall be due as provided therein.

Section 2.6 Bike Trail Improvements.

(a) Under the Disposition Agreement the Lessee agreed to construct the Bike Trail Improvements which shall be part of the Developer's leasehold interest in the Property until such time as the City completes the construction of the adjoining bike path. Upon the completion by the City of the adjoining bike Path, the City will notify the Lessee and request removal of access restrictions to the Bike Trail Improvements, at which point the Bike Easement shall become effective.

Section 2.7 Title to Improvements; Surrender Upon Termination.

The City hereby grants to the Lessee, without warranty (express or implied), any right, title, or interest that City may have in the improvements located on the Property from time to time prior to the termination of this Lease. The Improvements on the Property during the Lease Term shall be and remain the property of the Lessee; however, the Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Lease or as otherwise approved in writing by City. When the Lease Term expires, or when the Lease is otherwise terminated under the terms of this Lease the Lessee shall surrender the Property and deliver to City the Property (including all Improvements thereon) and title to the Improvements shall revert to and vest in City without cost to City in their then-existing condition. It is the intent of the Parties that this Lease shall create a constructive notice of severance of the Improvements from the Property without the necessity of a deed from City to the Lessee after the Improvements have been constructed. The Improvements, when built, shall be and remain real

property and shall be owned in fee by the Lessee for the Lease Term. If requested by City, the Lessee shall execute, at the end of the Lease Term, within ten (10) days of receipt of City's written request, a confirmatory quitclaim deed of the Improvements to be recorded at City's option and expense, and any other documents that may be reasonably required by City or City's title company to provide City title to the Property and the Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by City, but otherwise in their "as-is" condition.

Section 2.8 Assignment of Lessee's Leasehold Interest; Transfer of the Development.

Subject the provisions of Article 8, the Lessee may not assign its interest in this Lease and sell or transfer the Development without the prior written consent of City.

Section 2.9 Triple-Net Lease.

(a) This Lease is a triple-net lease, and Rent and other payments payable to or on behalf of City shall: (a) be paid without notice or demand and without offset, counterclaim, abatement, suspension, deferment, deduction or defense; and (b) be an absolute net return to City, free and clear of any expenses, charges or offsets whatsoever.

ARTICLE 3.
DEVELOPMENT OF IMPROVEMENTS

Section 3.1 Commencement of Construction.

The Lessee shall commence construction of the Improvements no later than the time specified in the Disposition Agreement (subject to extension as provided for therein).

Section 3.2 Completion of Construction.

The Lessee shall prosecute diligently to completion the construction of the Improvements, and shall complete construction by the time specified in the Disposition Agreement (subject to extension as provided for therein).

Section 3.3 Construction Pursuant to Permits and Disposition Agreement.

The Improvements shall be constructed in accordance with the Development Documents and the terms and conditions of the applicable land use permits and approvals and building permits.

Section 3.4 Equal Opportunity.

During the construction of the Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, age, disability, marital status, national origin, or ancestry in the hiring, firing, promoting, or demoting of any person engaged in the construction work.

Section 3.5 Discharge of Liens.

The Lessee shall not create or permit or suffer to be created or to remain, and will discharge, any lien (including, but not limited to, the liens of mechanics, laborers, materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Property and the Improvements thereon), encumbrances or other charge upon the Property and the Improvements thereon, or any part thereof, or upon the Lessee's leasehold interest therein. The Lessee shall have the right to contest in good faith and by appropriate legal proceedings the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien; provided that the Lessee shall utilize all reasonable means (including the posting of a surety bond in an amount 1 and 1/2 times the amount of such claim item) to protect the Property and any part thereof or the Improvements thereon against foreclosure, and shall indemnify and hold harmless City from any adverse effects resulting from such lien.

Section 3.6 Protection of City.

Nothing in this Lease shall be construed as constituting the consent of City, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or the Improvements thereon, or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving the Lessee or any other person any right, power or authority to act as agent of, or to contract for, or permit the rendering of any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the fee interest of the Property or the Improvements thereon. The City shall have the right at all reasonable times to post and keep posted on the Property any notices which City may deem necessary for the protection of City and of the Property and the Improvements thereon from mechanics' liens or other claims. In addition, the Lessee shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to the Lessee, or any of its respective contractors or subcontractors in connection with the Property and the Improvements thereon.

Section 3.7 Permits, Licenses and Easements.

Within ten (10) days after receipt of written request from the Lessee, City shall (at no expense to City) join in any and all applications (consistent with the Disposition Agreement) for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work that the Lessee may do pursuant to this Lease or the operation of the Development, and shall also join in any grants of easements for public utilities useful or necessary to the proper construction of the Improvements or the operation of the Development.

Section 3.8 Compliance with Applicable Law.

The Lessee shall cause all work performed in connection with construction of the Development to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that

may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Lessee shall be responsible to City for the procurement and maintenance thereof, as may be required of the Lessee and all entities engaged in work on the Property.

Section 3.9 Construction Pursuant to Plans and Laws.

(a) To the extent required by law, in the construction of the Development, the Lessee shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). In addition, to the extent required by applicable law, the Lessee shall cause its respective contractors and subcontractors to do all the following: (i) all calls for bids, bidding materials and the construction contract documents for the Development must specify that (1) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Development unless registered with the DIR pursuant to Labor Code Section 1725.5, and (2) the Development is subject to compliance monitoring and enforcement by the DIR; (ii) the Lessee is required to provide City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>); (iii) the Lessee shall cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; (iv) the Lessee shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner. Lessee shall indemnify, hold harmless and defend (with counsel reasonably acceptable to City) City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Lessee, its contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development or any other work undertaken or in connection with the Property.

(b) The prime contractor shall be responsible for ensuring a weekly certified payroll submitted through LCP Tracker (as defined in the Disposition Agreement as Exhibit H) is required during the term of construction of the Development. Payment of disbursement components may be delayed when certified payrolls are not properly submitted.

(c) The Lessee shall indemnify, protect, hold harmless and defend (with counsel reasonably selected by City) City, its governing board members, officers, representatives, agents, assigns and employees against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Lessee, or its contractor or subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of Labor Code Sections 1720 et seq., to

hire apprentices in accordance with Labor Code Sections 1777.5 *et seq.*, and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 *et seq.*, and the implementing regulations of the DIR in connection with the initial construction of the Development or any other work undertaken or in connection with Development and the Property.

(d) For purposes of this Section, the "initial construction" of the Development shall mean the work required in order to construct such improvements and obtain the Certificate of Completion for the Development.

(e) The requirements in this Section survive the repayment of City Loan, and the reconveyance of the Leasehold Deed of Trust and termination of this Lease.

Section 3.10 The Lessee to Furnish and Equip the Improvements.

(a) Upon completion of construction of the Improvements, the Lessee covenants and agrees to furnish and equip the Improvements with all fixtures, furnishings, equipment and other personal property (collectively, the "Personal Property") of a quantity as necessary to operate a first class affordable housing development in accordance with the standards set forth in this Lease and the Regulatory Agreement. The Lessee further agrees to take good care of such Personal Property, to keep the same in good order and condition ordinary wear and tear excepted, and promptly, at the Lessee's own cost and expense, to make all necessary repairs, replacements and renewals thereof. As used in this Lease, the term "Personal Property" includes all such replacements and renewals, and all fixtures, furnishings, equipment and other personal property of the Lessee located in, on or about the Property and the Improvements thereon. Any and all fixtures, furnishings, equipment and other personal property placed in, on or about the Property shall be the Personal Property of the Lessee during the Lease Term. Nothing in this Section 3.10 shall be read to require the Lessee to furnish individual units.

ARTICLE 4.

USE AND MAINTENANCE OF THE IMPROVEMENTS

Section 4.1 Use of Development.

(a) During the Lease Term, the Lessee shall at all times use and operate the Development in accordance with this Lease, the Disposition Agreement, the Regulatory Agreement, and all requirements of the Approved Loan Documents. Any use of the Property for any other purpose other than the operation of the Improvements in accordance with the Regulatory Agreement or any proposed "Major Additional Improvements" to the Property shall be subject to City's prior written approval, which may be granted or denied in City's sole discretion. For the purposes of this Section 4.1 the term "Major Additional Improvements" means any of the following: (1) any new buildings, structures or outdoor facilities other than the Improvements, (2) any substantial alterations, remodeling or rehabilitation of the Improvements, (3) construction of additional spaces or facilities, or (4) any other alteration, construction, remodeling or reconstruction on the Property with a cost in excess of One Hundred Thousand Dollars (\$100,000).

(b) During the Lease Term, the Lessee shall comply with all applicable and lawful statutes, rules, orders, ordinances, requirements, and regulations of the United States, the State of California, and any other governmental authority having jurisdiction over the Development; however, the Lessee may, in good faith and on reasonable grounds, dispute the applicability or the validity of any charge, complaint, or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement, or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Lessee agrees that any such contest shall be prosecuted to a final conclusion as promptly as reasonably possible.

(c) The Lessee shall:

(1) use the Development only to provide proper housing facilities and ancillary uses to tenants, and to maintain the character of the Development as required by this Lease, the Regulatory Agreement and any Approved Loan Documents for so long as such agreements remain in effect, and shall not use the Development for any disorderly or unlawful purpose;

(2) use reasonable efforts to prevent any residential tenant from committing or maintaining any nuisance or unlawful conduct on or about the Development;

(3) use reasonable efforts to prevent any residential tenant from violating any of the covenants and conditions of this Lease with respect to the Development;

(4) use reasonable efforts to abate any violation of this Lease by any residential tenant upon notice from City;

(5) subject to any applicable laws of the State of California and the rights of residential tenants in the Development, permit City and its agents to inspect the Development at any reasonable time upon reasonable prior notice during the Lease Term; and

(6) not commit or suffer to be committed any waste in, on or about the Property.

(d) Notwithstanding anything to the contrary herein, the Lessee shall have the right use the Bike Trail Improvements.

Section 4.2 Compliance with the Regulatory Agreement.

The Lessee hereby agrees that, for the term of the Lease and Regulatory Agreement, the Development will be used only for residential uses consistent with this Lease and the income restrictions set forth in the Regulatory Agreement.

Section 4.3 Maintenance of the Development.

(a) The Lessee agrees, for the entire Term of this Lease, to maintain all interior and exterior improvements, including landscaping, of the Development in first-class condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in

accordance with a Management Plan approved pursuant to Section 2.8 of the Disposition Agreement (including without limitation any landscape and signage plans), as the same may be amended from time to time, and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

(b) The Lessee acknowledges the great emphasis City places on quality maintenance to protect its investment and to provide quality low-income housing for area residents and to ensure that City-assisted affordable housing projects are not allowed to deteriorate due to deficient maintenance. In addition, the Lessee shall keep the Development free from all graffiti, and any accumulation of shopping carts, debris or waste material. The Lessee shall promptly make all repairs and replacements necessary to keep the Development in first-class condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials.

(c) In the event that the Lessee breaches any of the covenants contained in this Section 4.3 and such default continues for a period of ten (10) days after written notice from City, with respect to graffiti, shopping carts, debris, waste material, and general maintenance, or thirty (30) days after written notice from City, with respect to landscaping and building improvements, (and subject to any stricter requirements included in any applicable City ordinance) then City, in addition to whatever other remedy it may have under this Lease, at law or in equity, shall have the right to enter upon the Development and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, City shall be permitted (but is not required) to enter upon the Development and perform all acts and work necessary to protect, maintain and preserve the improvements and landscaped areas of the Property, and to attach a lien on the Lessee's interest in the Property, or to assess the Lessee's interest in the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure. The Lessee shall promptly pay to City, as applicable, the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a fifteen percent (15%) administrative charge.

(d) Landscaping. The Lessee agrees to have common area landscape maintenance performed regularly, including replacement of dead or diseased plants with comparable plants. Lessee agrees to adequately water the landscaping on the Property. No improperly maintained common area landscaping on the Property shall be visible from public streets and/or rights of way.

(1) Yard Area. No yard areas on the Property shall be left unmaintained, including:

(A) broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week;

(B) shopping carts, packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and

(C) vehicles parked or stored in other than approved parking areas.

(2) Building. No buildings located on the Property may be left in an unmaintained condition so that any of the following exist:

- (A) violations of state law, uniform codes, or City ordinances;
- (B) conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance;
- (C) broken windows;
- (D) graffiti (must be removed within forty-eight (48) hours);

and

(E) conditions constituting hazards and/or inviting trespassers, or malicious mischief.

(3) Sidewalks. The Lessee shall maintain, repair, and replace as necessary all public sidewalks adjacent to the Development.

Section 4.4 Utilities.

The Lessee shall be responsible for the cost of all utilities, including water, heat, gas, electricity, waste removal, sewers, and other utilities or services supplied to the Development (other than those payable directly by tenants of the Development), and the Lessee shall pay or cause said utility costs to be paid currently and as due.

Section 4.5 Taxes and Assessments.

(a) Payment of Taxes and Assessments. The Lessee shall, during the entire Lease Term, at its own cost and expense, pay the public officers charged with their collection, as the same become due and before any fine, penalty, interest, or other charge may be added to them for nonpayment, all real estate taxes, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature, made, assessed, levied, or imposed upon, or due and payable in connection with, or which become a lien upon, the Property, the Improvements, or any part of the Property or Improvements, or upon the Lessee's leasehold interest in the Property pursuant to this Lease, as well as assessments for sidewalks, streets, sewers, water, or any other public improvements and any other improvements or benefits which shall, during the Lease Term, be made, assessed, levied, or imposed upon or become due and payable in connection with, or a lien upon, the Property, the Improvements, or any part of the Property or Improvements, or upon the Lessee's leasehold interest in the Property pursuant to this Lease. The Lessee acknowledges that, pursuant to Revenue and Taxation Code Section 107.6, the Lessee's leasehold interest in the Property created pursuant to this Lease may be subject to the payment of property taxes levied against the Lessee's leasehold interest and the Lessee shall be responsible for the payment of all such property taxes, if applicable. In the event the Improvements or any possessory interest with respect thereto, should at any time be subject to ad

valorem taxes or privilege taxes levied, assessed or imposed on such property, the Lessee shall pay taxes upon the assessed value of the entire Property and the Improvements thereon and not merely upon the assessed value of its leasehold interest, as provided in California Health and Safety Code Section 33673.

(b) Payment of Fees. During the entire Lease Term, the Lessee shall pay, at its own cost and expense, before any fine, penalty, interest, or other charge may be added for nonpayment, all license and permit fees, charges for public utilities, and governmental charges relating to the use or occupancy of the Improvements.

(c) Copies of Notices to Lessee. The City shall promptly send to the Lessee copies of any and all notices received by it in respect to any taxes, assessments, charges, or fees for which the Lessee is liable pursuant to this Section 4.5.

(d) The City's Right to Cure. If the Lessee, in violation of the provisions of this Lease, shall fail to pay and to discharge any taxes, or any other fee, City may (but shall not be obligated to) pay or discharge such taxes, and the amount paid by City and the amount of all costs, expenses, interest and penalties connected therewith, including reasonable attorneys' fees, together with interest at the rate set forth in Section 2.6(c) shall be deemed to be and shall, upon demand of City, be payable by the Lessee as repayment of such advance by City.

Section 4.6 Assistance in Making Payments.

The parties acknowledge that Lessee is responsible under this Lease for making various payments to third parties, such as tax and utility payments in accordance with the provisions of this Article 4. In case any person or entity to whom any sum is directly payable by the Lessee under any of the provisions of this Lease (e.g., a tax collector or utility company) shall refuse to accept payment of such sum from the Lessee (due to the fact that the Lessee is not the fee owner of the Property or for any other reason), the Lessee shall thereupon give written notice of such fact to City and shall pay such sum directly to City at the address specified in Section 11.2 hereof, and City shall thereupon pay such sum to such person or entity.

Section 4.7 Hazardous Materials.

(a) Covenants and Agreements. The Lessee hereby covenants and agrees that:

(1) The Lessee shall not knowingly permit the Development or the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Property or the Development in violation of any applicable law;

(2) The Lessee shall keep and maintain the Property and the Development and each portion thereof in compliance with, and shall not cause or permit the Property and the Development or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same the Lessee shall immediately advise City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Lessee or the Development pursuant to any applicable Hazardous Materials Laws; (ii) any and all claims made or threatened by any third party against the Lessee or the Development relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (i) and this clause (ii) are hereinafter referred to as "Hazardous Materials Claims"); (iii) the presence of any Hazardous Materials in, on or under the Property or the Development in such quantities which require reporting to a government agency; or (iv) the Lessee's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development classified as "borderzone property" under the provisions of California Health and Safety Code Section 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Laws. If City reasonably determines that the Lessee is not adequately responding to a Hazardous Materials Claim, City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Lessee.

(4) Without City's prior written consent, which shall not be unreasonably withheld or delayed, the Lessee shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 6.4, the Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to City) City, its board members and councilmember's, officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of:

(1) the failure of the Lessee or any other person or entity, during the Lease Term, to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development;

(2) the presence in, on or under the Property or the Development of any Hazardous Materials or any releases or discharges during the Lease Term of any Hazardous Materials into, on, under or from the Property or the Development; or

(3) any activity carried on or undertaken on or off the Property or the Development, during the Lease Term, and whether by the Lessee or any employees, agents, contractors or subcontractors of the Lessee, or any third persons occupying or present on the

Property or the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials located or present on or under the Development (collectively "Indemnification Claims").

The foregoing indemnity shall further apply to any residual contamination on or under the Property or the Development, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the Indemnification Claims and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws; provided, however, the foregoing indemnity shall not apply to any Indemnification Claims arising directly or indirectly, in whole or in part, from City's gross negligence or willful misconduct. This obligation to indemnify, set forth in this Section 4.7(b) shall survive termination of this Lease.

(c) No Limitation. The Lessee hereby acknowledges and agrees that the Lessee's duties, obligations and liabilities under this Lease, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information City may have concerning the Development and/or the presence within the Development of any Hazardous Materials, whether City obtained such information from the Lessee or from its own investigations.

(d) Environmental Work. The Lessee shall be responsible for performing the work of any investigation and remediation that may be required by applicable law on the Property in order to develop the Development. The determination as to whether any such remediation is needed, and as to the scope and methodology thereof, shall be made by mutual agreement of the governmental agency with responsibility for monitoring such remediation and City and the Lessee. The Lessee shall notify City promptly upon discovery of any actionable levels of Hazardous Materials, and upon any release thereof, and shall consult with City in order to establish the extent of remediation to be undertaken and the procedures by which remediation thereof shall take place. The Lessee shall comply with, and shall cause its agents and contractors to comply with, all laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Substances. The investigation and remediation work shall be carried out in accordance with all applicable laws (including Hazardous Materials Laws) and such other procedures and processes as may be described in this Lease.

Section 4.8 Nondiscrimination.

The Lessee shall not, in the selection or approval of tenants or provision of services or in any other matter relating to the development and operation of the Development, discriminate against any person or group of persons on the grounds of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, age, source of income, or disability.

Section 4.9 Management Responsibilities.

The Lessee is responsible for all management functions with respect to the Development, including without limitation the selection of residents, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have

no responsibility over management of the Development. The Lessee shall retain a professional property management company, approved by City in its reasonable discretion, to perform its management duties hereunder. A resident manager shall also be required. At least six (6) months prior to completion of construction of the Development, and annually thereafter, Lessee shall submit a proposed Management Plan to City for approval by City. The City shall approve or disapprove (with written explanation for disapproval) of the proposed management plan by notifying the Lessee in writing within fifteen (15) business days of the date of submission to City.

Section 4.10 Management Agent; Periodic Reports.

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

Section 4.11 Performance Review.

The City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Lease. The Lessee shall cooperate with City in such reviews.

Section 4.12 Books, Records and Reports.

For purposes of such periodic reviews, the Lessee and the Management Agent shall make available to City for inspection all books and records with respect to the Development. In addition, the Lessee shall provide City with: (1) by not later than thirty (30) days prior to commencement of each Fiscal Year, the annual budget for the upcoming calendar; (2) within ninety (90) days following the end of each Fiscal Year, a report showing the actual income and expenditures with respect to the Development for the immediately preceding calendar year and the status of all reserve funds; and (3) within one hundred twenty (120) days following the end of each Fiscal Year, a copy of the Lessee's federal income tax filings for the calendar year.

Section 4.13 Replacement of Management Agent or On-Site Resident Manager.

(a) If, as a result of a periodic review, City determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the requirements and standards of this Agreement or the Regulatory Agreement, City shall deliver notice to the Developer of such operational issues which notice shall describe the management deficiencies with specificity along with the actions City deems necessary to cure said deficiencies along with a period in which the deficiencies shall be cured. Within thirty (30) days of receipt by the Lessee of such written notice, City staff and the Lessee shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

(b) If, after such meeting, City staff recommends in writing the replacement of the Management Agent, with the reasonable concurrence of the partners of the Partnership and the Senior Lender, the Lessee shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 4.10 above and reasonably approved by City pursuant to Section 4.10 above.

(c) Any contract for the operation or management of the Development entered into by the Lessee shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a Lessee Event of Default under this Agreement, and City may enforce this provision through legal proceedings as specified in Section 10.1(b) below.

Section 4.14 Approval of Management Plan.

The Lessee shall submit to City an initial proposed Management Plan no later than six (6) months after the commencement of construction of the Development pursuant to the Schedule of Performance as set forth in Section 4.3 of the Disposition Agreement. Each year, within sixty (60) days of the end of the Lessee's Fiscal Year, the Lessee shall submit to City any proposed changes to the Management Plan. The City shall approve or disapprove the proposed changes to the Management Plan in writing within fifteen (15) calendar days following City's receipt of the request to amend Management Plan, which approval shall not be unreasonably denied. If the proposed change to the Management Plan is disapproved by City, City shall deliver a written notice to the Lessee setting forth, in reasonable detail, the reasons for such disapproval. The Lessee shall have fifteen (15) calendar days following the receipt of such notice to submit a revised Management Plan modification in any way necessary to ensure that such policies comply with the provisions of this Lease. The City's approval of the amendments to the Management Plan shall not be unreasonably withheld.

Section 4.15 Resident Services Plan and Resident Services Budget.

Lessee hereby agrees to hire and employ a resident services coordinator at least one (1) month prior to completion of the Improvements pursuant to Section 4.4 of the Disposition Agreement. The Lessee shall submit to City an initial proposed Resident Services Plan and Resident Services Budget no later than six (6) months after the commencement of construction of the Development pursuant to the Schedule of Performance as set forth in Section 4.3 of the

Disposition Agreement. Each year, within sixty (60) days of the end of the Lessee's Fiscal Year, the Lessee shall furnish to City a draft Resident Services Plan and Resident Services Budget. Upon receipt by City of the proposed Resident Services Plan and Resident Services Budget, City shall promptly review same and approve or disapprove the Resident Services Plan and the Resident Services Budget within ten (10) working days. If the Resident Services Plan or Resident Services Budget are not approved by City, City shall set forth in writing and notify the Lessee of City's reasons for withholding such approval, which may include a request by City for a change in the nature or scope of resident services or a change in service provider. The Lessee shall thereafter submit a revised Resident Services Plan and Resident Services Budget for City approval, which approval shall be granted or denied within five (5) working days in accordance with the procedures set forth above.

Section 4.16 Public Safety.

(a) The Lessee acknowledges that City places a prime importance on the security of City assisted projects and the safety of the residents and surrounding community. The Lessee agrees to implement and maintain throughout the Term the following security measures in the Development:

(1) to the extent feasible employ defensible space design principles and crime prevention measures in the operation of the Development including but not limited to maintaining adequate lighting in parking areas and pathways; and

(2) provide added security including dead-bolt locks for every entry door, and where entry doors are damaged, replace them with solid-core doors.

(b) The City shall have the right to enter on the Property and/or contact the City of Albany Police Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Residents and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition.

ARTICLE 5.
APPROVED LOANS

Section 5.1 Loan Obligations.

Nothing contained in this Lease shall relieve the Lessee of its obligations and responsibilities under any Approved Loans to operate the Development as set forth in the applicable Approved Loan Documents.

Section 5.2 Liens and Encumbrances Against Lessee's Interest in the Leasehold Estate.

(a) Lessee shall have the right to encumber the leasehold estate created by this Lease and the Improvements with the lien or liens securing one or more Approved Loans, subject to City's review and prior approval of the Approved Loan Documents which approval shall not

be unreasonably withheld or conditioned. Within fifteen (15) days following receipt of the proposed Approved Loan Documents along with Lessee's written notice requesting approval of such documents, City shall review and either approve or disapprove the Approved Loan Documents.

(b) The Lessee shall not have the right to encumber City's fee interest in the Property and the reversionary interest in the Improvements with a lien of an Approved Loan or any Loan.

(c) For as long as there is any lien securing any Approved Loans:

(1) The City shall not agree to any mutual termination or accept any surrender of this Lease, nor shall City consent to any amendment or modification of this Lease, without prior written consent of all Approved Lenders that have an outstanding Approved Loan.

(2) Notwithstanding any default by the Lessee under this Lease, City shall have no right to terminate this Lease unless City has given all Approved Lenders which have an outstanding Approved Loan and the Investor written notice of such default pursuant to the requirement of Sections 5.2(c)(vii) and 11.2 and the Investor and/or such Approved Lenders have failed to remedy such default or acquire the Lessee's leasehold estate created by this Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by this subsection 5.2(c), as applicable. If City receives competing or conflicting offers to cure any default, then City shall accept the offers to cure in the following order: first, the Lessee, then each Approved Lender in the relative priority of their respective deeds of trust, and then the Investor. Notwithstanding the foregoing, an Approved Lender shall not be required to obtain possession or commence or continue foreclosure proceedings as a prerequisite to curing a default by the Lessee.

(3) Any Approved Lender which has an outstanding Approved Loan or the Investor 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 Lease, and do any other act or thing required of the Lessee by the terms of this Lease, to prevent termination of this Lease. Each Approved Lender and the Investor shall have thirty (30) days after receipt of notice from City describing the default to cure monetary defaults and nonmonetary defaults (the "Lender Cure Period"). All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by the Lessee instead of by the Approved Lender(s) or the Investor and the costs thereof may be added to the security interest and the lien securing the Approved Loans(s) thereof.

(4) In addition to the cure period provided in paragraph (ii) above, if the default is such that possession of the Development may be reasonably necessary to remedy the default, any Approved Lender which has an outstanding Approved Loan shall have a reasonable time after the expiration of the Lender Cure Period within which to remedy such default, provided that:

(A) such Approved Lender has fully cured any default in the payment of any monetary obligations of the Lessee under this Lease within the Lender Cure Period and shall continue to pay currently such monetary obligations when the same are due;

(B) such Approved Lender has acquired the Lessee's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same; and

(C) after gaining possession of the Development, the Approved Lender has cured all non-monetary defaults capable of cure by the Approved Lender and performed all obligations of the Lessee capable of performance by the Approved Lender when the obligations are due.

(5) Any default under this Lease which by its nature cannot be remedied by any Approved Lender shall be deemed to be remedied if:

(A) within thirty (30) days after receiving written notice from City describing the default, or prior thereto, any Approved Lender has acquired the Lessee's leasehold estate or commenced foreclosure or other appropriate proceedings;

(B) the Approved Lender diligently prosecutes any such proceedings to completion;

(C) the Approved Lender has fully cured any default in the payment of any monetary obligations of Lessee hereunder which does not require possession of the Development; and

(D) after gaining possession of the Development, the Approved Lender performs all other obligations of Lessee hereunder capable of performance by the Approved Lender when the obligations are due.

(6) If Approved Lenders are prohibited, stayed, or enjoined by any bankruptcy, insolvency, or other judicial proceedings involving the Lessee from commencing or prosecuting foreclosure or other appropriate proceedings, then the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, so long as the Approved Lender claiming the extension has fully cured any default in the payment of any monetary obligations of Lessee under this Lease, continues to pay currently such monetary obligations when the same fall due, and does not interfere with City's efforts to seek compliance by the Lessee with any non-monetary obligation under this Lease.

(7) The City shall mail or deliver to any Approved Lenders which have any outstanding Approved Loan and the Investor a duplicate copy of all notices which City may from time to time give to the Lessee pursuant to this Lease. All notices delivered by City to any Approved Lenders or the Investor shall also comply with the notice provisions of Section 11.2.

(8) The conveyance of the Lessee's interest in the Development to a Foreclosure Transferee by means of a foreclosure or a deed in lieu of foreclosure shall not be subject to City's prior consent. In the event Foreclosure Transferee becomes the Lessee under this Lease by means of foreclosure or deed in lieu of foreclosure or pursuant to any new lease obtained under subsection (ix) below, City shall recognize the Foreclosure Transferee and the Foreclosure Transferee shall be personally liable under this Lease or such new lease only for the period of time that the Foreclosure Transferee remains the lessee. Nothing in this section obligates any Foreclosure Transferee to remedy any default of the Lessee, and any failure of any Approved Lender to complete any such cure after commencing the same shall not give rise to any liability of the Approved Lender to City.

(9) If any Foreclosure Transferee shall acquire the Lessee's interest in the Development, such Foreclosure Transferee shall thereafter have the right to assign or transfer such interest in the Development to an assignee, subject to the consent provisions of Article 8 below. The Foreclosure Transferee shall be released and relieved of any liability under this Lease for acts occurring after the assignment and under any other document entered into in connection herewith upon assignment of all of the Foreclosure Transferee's interest in the Development.

(10) If a Foreclosure Transferee becomes the legal owner of the leasehold estate, and upon written request by the Foreclosure Transferee or its permitted transferee within sixty (60) days after becoming the legal owner of the leasehold estate, City shall enter into a new lease of the Property with the Foreclosure Transferee or its permitted transferee for the remainder of the Lease Term with the same agreements, covenants, reversionary interests, and conditions (except for any requirements which have been fulfilled by the Lessee prior to termination) as are contained in this Lease and with priority equal to this Lease, so long as the Foreclosure Transferee or its permitted transferee promptly cures any existing defaults by the Lessee susceptible to cure by the Foreclosure Transferee or its permitted transferee.

(11) If this Lease is terminated by a bankruptcy proceeding, foreclosure, or by other operation of law, then City shall, upon request by an Approved Lender or its permitted transferee, execute a new lease of the Property to the Approved Lender or other transferee, as the case may be, on the same terms and conditions as this Lease, except that the term will commence on the date of the new lease and will continue for the remaining unexpired term of this Lease. If City receives conflicting requests for a new lease of the Property, then City shall execute a new lease of the Property with the requesting Approved Lender having the most senior deed of trust.

(12) The City shall cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed leasehold mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease and allowing such leasehold mortgagee reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security. The City shall execute and deliver (and acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment, so long as such amendment does not in any way affect

the Lease Term or Rent under this Lease or otherwise in any material respect adversely affect any rights of City under this Lease.

Section 5.3 Cost of Approved Loans to be Paid by Lessee.

The Lessee shall bear all of the costs and expenses in connection with (a) the preparation and securing of the Approved Loans, (b) the delivery of any instruments and documents and their filing and recording, if required, and (c) all taxes and charges payable in connection with the Approved Loans.

Section 5.4 Proceeds of Approved Loans.

All Approved Loan proceeds shall be paid to and become the property of the Lessee, and City shall have no right to receive any such Approved Loan proceeds.

Section 5.5 Notice and Right to Cure Defaults Under Approved Loans.

Lessee shall include in all Approved Loan Documents that, in the event of default by the Lessee under an Approved Loan, notice shall be given to City at the same time given to the Lessee, and City shall have the right, but not the obligation, to cure the default with a cure period which extends not less than ninety (90) days beyond the cure period provided to the Lessee under the applicable Approved Loan Document. Any payments made by City to cure a default shall be treated as Additional Rent due from the Lessee, which shall be paid within thirty (30) days of the date on which the payment was made by City.

Section 5.6 Modifications.

If an Approved Lender should, as a condition of providing financing for development of all or a portion of the Development, request any modification of this Lease in order to protect its interests in the Development or this Lease, City shall consider such request in good faith consistent with the purpose and intent of this Lease and the rights and obligations of the Parties under this Lease.

Section 5.7 Estoppel Certificates.

The City and the Lessee agree that at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, or upon request from the Investor or any Approved Lender or a permitted assignee or other interested party, City or the Lessee will execute, acknowledge and deliver to the other party or to such other parties a statement in writing certifying (a) that this Lease is unmodified and in full force and effect; (b) the date through which the Rent has been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against City or the Lessee, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of City, the Lessee or any Approved Lender or the Investor, as the case may be, in this Lease or by any assignee of any Approved Lender.

ARTICLE 6.
INSURANCE

Section 6.1 Required Insurance Coverage.

The Lessee shall furnish to City the type and amounts of insurance specified in Exhibit B. The City shall be named as an additional insured on the policies specified in Exhibit B. The Lessee shall insure that all workers' compensation insurance policies carried by the general contractor and subcontractors working on the Development include a waiver of subrogation in favor of City.

Section 6.2 Insurance Policies and Premiums.

All liability policies required by this Lease or any Approved Loan Document shall comply with the requirements set forth in Exhibit B.

(a) Insurance shall be placed with insurers with a current Best Rating of no less than A:VII. Any deductible or self-insured retention shall be disclosed to and approved by City.

(b) The Lessee shall furnish City with certificates and original endorsements effecting the required coverage promptly upon request. The endorsements shall be signed by persons authorized by the insurer to bind coverage on its behalf. The endorsements shall be on forms provided by City or as approved by City. If the Lessee does not keep all required insurance policies in full force and effect, then City may, in addition to other remedies under this Lease, and upon not less than fifteen (15) days prior written notice and the failure of the Lessee to obtain such insurance within such fifteen (15) day period, take out the necessary insurance, and the Lessee shall pay the cost of such insurance.

(c) Promptly upon City's request from time to time during the Lease Term, the Lessee shall increase the amount of the insurance policies, or otherwise modify such policies set forth in Exhibit B, so long as sufficient funds are reasonably available to pay for such increases.

Section 6.3 Proceeds of Insurance.

For so long as any Approved Loan on the Development is outstanding or as required under Section 7.2 below, the disposition of all commercial property insurance (including builder's risk) proceeds shall be governed by the Approved Loan Documents. If the Improvements are not repaired or rebuilt, all such proceeds shall be applied in a manner consistent with the terms of the Approved Loans, with any conflicts resolved in accordance with the relative priority of their respective deeds of trust.

If the Lessee fails to agree in writing within thirty (30) days after payment of the proceeds of insurance that such repair or rebuilding is economically feasible and the Improvements as so restored will be economically viable, then within an additional sixty (60) days, Lessee shall commence to demolish and clear the Property of the Improvements, unless otherwise directed by City, and this Lease shall terminate at the option of City upon the completion of the clearance of the Property by the Lessee.

Section 6.4 Indemnification.

The Lessee agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to City) City, its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Lessee's performance or non-performance under this Lease, or any other agreement executed pursuant to this Lease, or arising out of acts or omissions of any of Lessee's contractors, subcontractors, or persons claiming under any of the aforesaid, except as directly caused by City's willful misconduct or gross negligence. The provisions of this section shall survive expiration of the Lease Term or other termination of this Lease, and shall remain in full force and effect.

ARTICLE 7.

CONDEMNATION, DAMAGE OR DESTRUCTION OF THE IMPROVEMENTS

Section 7.1 Condemnation.

If the Improvements or the Property or any part thereof is taken or condemned, for any public or quasi-public purpose or use by any competent entity in appropriate proceedings, or by any right of eminent domain, then City and Lessee shall request that awards and other payments on account of a taking of the Improvements and the Property (less costs, fees and expenses incurred by City and Lessee in connection with the collection thereof) be divided by the presiding court between loss of value of the fee interest in the Property and loss of value of the Improvements and the leasehold interest in the Property. In any case, subject to the rights of Approved Lenders under the Approved Loan Documents (with any conflicts resolved in accordance with the relative priority of their respective deeds of trust), such awards and payments shall be applied as follows:

(a) Net awards and payments received on account of a partial taking of the Improvements, other than a taking for a temporary use not exceeding one (1) year, shall be allocated and paid in the following order of priority:

(1) If the Lessee reasonably believes restoration is economically feasible, and unless the Approved Lenders under the Approved Loan Documents require that the proceeds be applied to the outstanding indebtedness under the Approved Loans, first, to pay the cost of restoration of the Improvements, provided that the extent of the Lessee's obligations to restore the Improvements shall be limited to the amount of the net award and payment received by and available to Lessee on account of the taking. In such event, the condemnation proceeds shall be paid into the Construction Fund described in Section 7.2 below, subject to the rights of Approved Lenders to collect and disburse such funds.

(2) Second (or first if (i) the Lessee does not believe that restoration is economically feasible or viable as described above, or (ii) the Approved Lender(s) under the Approved Loan Documents require(s) that such proceeds be applied to the outstanding indebtedness under the Approved Loan(s)) to any Approved Lenders (in the order of their respective lien priority, if there is more than one Approved Lender) in an amount necessary to

reduce the outstanding indebtedness under the approved Loan(s) to the extent required by the Approved Lender(s).

(3) The balance, if any, shall be divided between City and the Lessee in the manner specified in subparagraph (e) below.

(b) Net awards and payments received on account of a partial or total taking of only City's fee interest in the Property or the reversionary interest in the Improvements (that is, a taking of City's fee interest in the Property or City's reversionary interest in the Improvements that has no effect on the value of the Lessee's leasehold interest in the Property or the Lessee's fee interest in the Improvements), including severance damages, shall be paid to City which amount shall be free and clear of any claims of the Lessee, or any other persons claiming rights to the Property through or under the Lessee.

(c) Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period during the Lease Term shall be paid to the Lessee; however, if such taking for temporary use has resulted in any damage to or destruction of the Development, then such net awards and payments shall be first applied to pay the cost of restoration if the Lessee determines that restoration is economically feasible. Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period beyond the Lease Term shall be paid to City.

(d) Net awards and payments received on account of a total taking of the Development shall be allocated and paid in the following order of priority:

(1) First, to any Approved Lenders with then-outstanding Approved Loans secured by the Development (in the order of their respective lien priority, if there is more than one Approved Lender), an amount equal to the unpaid balance secured by their respective Approved Loans up to the total amount of such awards and payments;

(2) The balance, if any, shall be divided between City and the Lessee in the manner specified in subparagraph (e) below.

(e) For purposes of subsections (a)(iii) and (d)(ii) above, proceeds shall be paid in the following manner: first, the Lessee shall receive reimbursement for any funds it has reasonably expended for repair and/or reconstruction of the Development (other than funds received from Approved Lenders). Second, the balance, if any, shall be paid to the Lessee and City *pari passu*. The Lessee shall receive the portion of the payment attributable to the Improvements, Lessee's leasehold interest, and Lessee's trade fixtures and personal property. The City shall receive the portion of the payment attributable to City's fee interest in the Property and City's reversionary interest in the Improvements.

(f) The Lessee shall receive any award granted for or allocated to trade fixtures, moving expenses or loss of business.

Section 7.2 Administration of Construction Fund in the Event of Condemnation, or Damage or Destruction of Development.

If the Approved Loans have been paid in full or as otherwise required under Section 6.3 above, and if the Improvements, or any part of it, is to be repaired or reconstructed after damage or destruction or condemnation, then all proceeds collected under any and all policies of insurance referred to in Article 6 above covering such damage or destruction, or all compensation received for such taking by the exercise of the power of eminent domain, shall be paid into a special trust fund to be created and held by the Lessee during such repairing or reconstructing (the "Construction Fund"). Any surplus of such insurance or condemnation proceeds remaining in the Construction Fund after the completion of all payments for such repairing or reconstructing shall be held or applied by the Lessee in a manner consistent with the applicable provision of this Article 7.

Section 7.3 Lessee, City, Approved Lenders to be Made Parties in Legal Proceedings.

(a) In the event proceedings shall be instituted (i) for the exercise of the power of eminent domain, or (ii) as a result of any damage to or destruction of the Development, the resulting proceeds shall be paid to the Approved Lenders for application or disbursement in accordance with the Approved Loan Documents (in the order of their respective lien priority, if there is more than one such Approved Lender). The Lessee, City, and, as necessary, any Approved Lender with a then-outstanding Approved Loan shall be made parties to those proceedings, and if not made parties by the petitioning party, shall be brought into the proceedings by appropriate proceedings of the other parties so that adjudication may be made of the damages, if any, to be paid to the Lessee, City and Approved Lenders as compensation for loss of their rights in the Improvements or the Property, or for damage to or destruction of the Development. Should City or Lessee receive notice of institution of any proceedings subject to Section 7.1, the Party receiving such notice shall notify the other Party not later than thirty (30) days after receiving such notice.

(b) The City and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration, or adjustment of any and all claims and demands for damages on account of damage to, or destruction of, the Development, or for damages on account of the taking or condemnation of the Improvements or the Property.

Section 7.4 Termination.

In the event of a total taking or in the event of damage, destruction, or a partial taking, other than a temporary taking of the Development, which the Lessee reasonably determines renders continued operation of the Development infeasible both as a whole and in substantial part, this Lease shall terminate at the option of City (except if the Lessee is rebuilding the Development in accordance with the terms of this Lease), and in such event any proceeds shall be allocated pursuant to Section 6.3 or Article 7, as appropriate. In the event of a partial taking that does not result in termination pursuant to this Section 7.4, this Lease shall remain in full force and effect as to the portion of the Development remaining.

ARTICLE 8.
ASSIGNMENT AND TRANSFERS

Section 8.1 Definitions.

As used in this Article 8, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Lease or of the Property or any part thereof or any interest therein or of the Development constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in the Lessee, or any contract or agreement to do any of the same.

Section 8.2 Purpose of Restrictions on Transfer.

This Lease is entered into solely for the purpose of development and operation of the Development on the Property and its subsequent use in accordance with the terms of this Lease. The qualifications and identity of the Lessee are of particular concern to City, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The fact that a Transfer as defined in Section 8.1 above is for practical purposes a transfer or disposition of the Property.

It is because of the qualifications and identity of the Lessee that City is entering into this Lease with the Lessee and that Transfers are permitted only as provided in this Lease.

Section 8.3 Prohibited Transfers.

The limitations on Transfers set forth in this Section 8.3 shall apply for the Lease Term. Except as expressly permitted in this Lease, the Lessee represents and agrees that the Lessee has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of City. The City may approve any such Transfer in its sole discretion. The Parties agree and acknowledge that a [SAHA Entity Name] , L.P. or SAHA Affiliate shall remain the managing general partner of the Lessee throughout the Lease Term. Any Transfer made in contravention of this Section 8.3 shall be void and shall be deemed to be a default under this Lease, whether or not the Lessee knew of or participated in such Transfer.

Section 8.4 Permitted Transfers.

Notwithstanding the provisions of Section 8.3, the following Transfers shall be permitted without the prior written consent of City (subject to satisfaction of the conditions of Section 8.5):

- (a) Any Transfer creating an Approved Loan;
- (b) Any Transfer directly resulting from the foreclosure of an Approved Loan or the granting of a deed in lieu of foreclosure of an Approved Loan;
- (c) The leasing of residential units within the Development in accordance with the Regulatory Agreement;
- (d) A transfer of any partnership interest in Lessor to any affiliate of [SAHA Entity Name] , L.P.;
- (e) The granting of easements, licenses, or permits to facilitate the development of the Property;
- (f) The City hereby approves a Transfer of a limited partnership interest in the Lessee to the Investor, or to an affiliate of the Investor (provided such affiliate provides documentation reasonably acceptable to City that the affiliate has sufficient financial capability to provide the capital contributions set forth in the Financing Plan) and future transfers of such interest provided that:
 - (1) the Lessee's partnership agreement provides for capital contributions of the limited partners consistent with Financing Plan and is first approved by City in its reasonable discretion;
 - (2) all documents associated with the tax credit syndication of the Development are submitted to City for approval prior to execution, which approval shall not be unreasonably withheld; and
 - (3) in subsequent transfers the Investor (or an affiliate of the Investor reasonably acceptable to City) remains liable for all unpaid capital contributions.

The Parties agree and acknowledge that a [SAHA Entity Name] , or SAHA Affiliate shall remain the administrative general partner of the Lessee throughout the Lease Term. In the event the general partner of the Lessee is removed by the limited partner of the Lessee for cause following default under the Lessee's partnership agreement, City hereby approves the transfer of the general partner interest to an entity that is selected by the Investor and approved in advance and in writing by City, which approval shall not be unreasonably withheld.

Section 8.5 Procedure for Approval of Certain Transfers.

Except as otherwise permitted pursuant to Section 8.4 above, City shall in its sole discretion approve or disapprove a request for a Transfer made by the Lessee upon the Lessee's delivery of written notice to City requesting such approval. Such notice shall be accompanied by evidence regarding the proposed Transfer in reasonably sufficient detail to enable City to evaluate the proposed Transfer, including, without limitation, transferee financial statements, information regarding prior transferee experience, and information regarding transferee's proposed use and/or development of the Property. Within thirty (30) days after receipt of the

Lessee's written notice requesting City approval of a proposed Transfer, City shall either reasonably approve or disapprove such proposed Transfer, or shall respond in writing by stating what further information, if any, City reasonably requires in order to determine whether or not to grant the requested approval. Upon receipt of such a response, the Lessee shall promptly furnish to City such further information as may be reasonably requested. Within ten (10) days after City's receipt of the Lessee's submittal of the requested further information, City shall either reasonably approve or disapprove such proposed Transfer. The City's failure to respond within such ten (10) day period to any such request for approval shall be deemed to be City's approval thereof.

Upon City granting approval of such proposed Transfer, the person or entity to which such Transfer is made, by an instrument in writing prepared by City and in form recordable among the land records of County of Alameda, shall expressly assume the obligations of the Lessee under this Lease and agree to be subject to the conditions and restrictions to which the Lessee is subject arising during this Lease, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer.

Section 8.6 Assignments.

Any assignment of rights and/or delegation of obligations under this Lease in connection with a Transfer (whether or not City approval is required) shall be in writing executed by the Lessee and the assignee or transferee, with a copy thereof delivered to City within thirty (30) days after the effective date thereof. Upon assignment or transfer of the Development pursuant to an assumption agreement described in Section 8.5 above, the assignor shall be relieved of liability with respect to any such obligations relating to the Development assumed by the assignee. Notwithstanding the foregoing, unless such assignee specifically assumes the obligations under this Lease with respect to the Development, the assignor will retain such obligations and remain jointly and severally liable for such obligations with such assignee. In the absence of specific written agreement by City (which City may grant or withhold in its sole discretion), no Transfer permitted by this Lease or approved by City shall be deemed to relieve the transferor from any obligation under this Lease.

ARTICLE 9.
REPRESENTATIONS AND ASSURANCES

Section 9.1 City to Give Peaceful Possession.

Lessee shall have, hold, and enjoy, during the Lease Term, peaceful, quiet, and undisputed possession of the Property without hindrance or molestation by or from City so long as the Lessee is not in default under this Lease following the expiration of all applicable notice and cure periods.

Section 9.2 Lessee Representations.

The Lessee represents and warrants, as of the Commencement Date, as follows:

(a) Organization. The Lessee is a duly organized, validly existing California limited partnership, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Lessee. The Lessee has full power and authority to execute and deliver this Lease, and all documents to be executed and delivered, pursuant to this Lease, and to perform and observe the terms and provisions of this Lease and of all documents to be executed and delivered pursuant to this Lease.

(c) Authority of Persons Executing Documents. This Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Lessee, and all actions required under the Lessee's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, have been duly taken.

(d) Valid Binding Agreements. This Lease and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Lease constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Lessee enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Lease or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Lease, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or City whatsoever binding on the Lessee, or any provision of the organizational documents of the Lessee, or will conflict with or constitute a breach of or a default under any agreement to which the Lessee is a party, or will result in the creation or imposition of any lien upon any assets or property of the Lessee, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or City.

(g) Pending Proceedings. The Lessee is not in default under any law or regulation or under any order of any court, board, commission or City whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened against or affecting the Lessee, at law or in equity, before or by any court, board, commission or City whatsoever which might, if determined adversely to the Lessee, materially affect the Lessee's ability to develop the Improvements.

(h) Title to Property. Upon the recordation of the Memorandum of Lease, the Lessee will have good and marketable leasehold title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of City or approved in writing by City.

(i) Financial Statements. The financial statements of the Lessee and other financial data and information furnished by the Lessee to City fairly present the information contained therein. As of the date of this Lease, there has not been any adverse, material change in the financial condition of the Lessee from that shown by such financial statements and other data and information.

(j) Sufficient Funds. The Lessee holds sufficient funds or binding commitments for sufficient funds to complete the construction of the Improvements in accordance with this Agreement.

Section 9.3 Release of City.

The City may sell, assign, transfer or convey all or any part of City's interest in the Property, reversionary interest in the Improvements, or this Lease without obtaining the Lessee's consent, as long as the purchaser, assignee, or transferee expressly assumes all of the obligations of City under this Lease by a written instrument in a form reasonably satisfactory to Lessee and recordable in the Official Records. In the event of a sale, assignment, transfer or conveyance by City of the Property or its rights under this Lease, the same shall operate to release City from any future liability upon any of the covenants or conditions of this Lease, expressed or implied, in favor of the Lessee, and in such event the Lessee shall look solely to the successor in interest of City. This Lease shall not be affected by any such sale or transfer, and the Lessee agrees to attorn to any such purchaser or assignee.

Section 9.4 Holding Over.

If the Lessee shall retain possession of the Property or the Improvements thereon or any part thereof without City's prior written consent following the expiration of the Lease Term or sooner termination of this Lease for any reason, then the Lessee shall pay to City the fair market rent for the Property as of the date the Lessee retained possession of the Property or the Improvements, or any part thereof without City's prior written consent following the expiration or sooner termination of this Lease as determined by a licensed real estate appraiser selected by City in its sole discretion (the "Holdover Rent").

In addition to the Holdover Rent, the Lessee shall pay City all other payments that would have been due had the Lease not expired or been terminated and had the Rent and other payment terms in effect at the time of the expiration or sooner termination of the Lease remained in effect. These payments shall be applicable to a holding over of any kind by the Lessee. The Lessee shall also indemnify and hold City harmless from any loss or liability resulting from delay by the Lessee in surrendering the Property, including, without limitation, any claims made by any succeeding lessee founded on such delay. Acceptance of Rent by City following expiration or termination shall not constitute a renewal of this Lease and nothing contained in this Section 9.4

shall waive City's right of reentry or any other right. The Lessee shall be only a Lessee at sufferance, whether or not City accepts any Rent from the Lessee while the Lessee is holding over without City's written consent.

Section 9.5 No Merger.

Except upon expiration of the Lease Term or upon termination of this Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Lease or the Lessee's estate created hereunder with the fee estate of the Property or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Lease, the Lessee's estate created hereunder or any interest in this Lease or the Lessee's estate (including the Improvements), and (b) the fee estate in the Property or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of City, having an interest in (i) this Lease or the Lessee's estate created hereunder, and (ii) the fee estate in the Property or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE 10.
DEFAULTS AND REMEDIES

Section 10.1 Events of Default; Remedy for Default by Lessee.

Any one or more of the following events shall constitute an "Event of Default" by the Lessee:

- (a) Failure to pay Rent, as required pursuant to Section 2.5 of this Lease, or any other payment required hereunder, and continuance of such failure for a period of fifteen (15) days after receipt by the Lessee of written notice specifying the nonpayment;
- (b) Failure of the Lessee to observe and perform any other covenant, condition or agreement hereunder on its part to be performed, and (1) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default, or (2) if by reason of the nature of such default the same cannot be remedied within such thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of such notice to cure the same, within a reasonable amount of time thereafter but in no event later than one hundred twenty (120) days following City's initial notice; or
- (c) A default by the Lessee under City Loan, the Disposition Agreement, the Regulatory Agreement, City Promissory Note or City Leasehold Deed of Trust which continues beyond the expiration of all applicable notice and cure periods; or
- (d) The Lessee's abandonment of the Property for the period of time required for such abandonment to be legally recognized as such under California law; or
- (e) A general assignment by the Lessee for the benefit of creditors; or

(f) The filing of a voluntary petition by the Lessee, or the filing of an involuntary petition by any of the Lessee's creditors, seeking the rehabilitation, liquidation or reorganization of the Lessee under any law relating to bankruptcy, insolvency or other relief of debtors, provided that in the case of an involuntary petition Lessee shall have ninety (90) days to cause such petition to be withdrawn or dismissed; or

(g) The appointment of a receiver or other custodian to take possession of substantially all of the Lessee's assets or of this leasehold, which appointment is not withdrawn or dismissed within sixty (60) days, excluding any receivership initiated by an Approved Lender which shall not constitute an Event of Default; or

(h) The Lessee becomes insolvent or declares in writing it is unwilling to pay its debts as they become due; or any court enters a decree or order directing the winding up or liquidation of the Lessee or of substantially all of its assets; or the Lessee takes any action toward the dissolution or winding up of its affairs or the cessation or suspension of its use of the Development; or

(i) Attachment, execution or other judicial seizure of substantially all of the Lessee's assets or this leasehold, which is not dismissed, bonded, or stayed within thirty (30) days; or

(j) A violation of the Lessee's obligations under any of the Approved Loan Documents (without cure or waiver after expiration of applicable cure periods), including (without limitation) a failure to operate, maintain, and manage the Improvements in accordance with this Lease; or

(k) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 8.

(l) Whenever any default has occurred and is continuing and upon expiration of any applicable cure periods, and subject to the cure rights of Approved Lenders and the Investor, an Event of Default shall exist, City may take whatever action at law or in equity as may appear reasonably necessary to enforce performance or observance of this Lease, including without limitation, termination of this Lease. Notwithstanding the foregoing, after the issuance of a certificate of completion the Lessor shall not terminate this Lease prior to the expiration of the fifteen year tax credit compliance period for the Improvements. In the event of an Event of Default, City's remedies shall be cumulative, and no remedy expressly provided for in this section shall be deemed to exclude any other remedy allowed by law.

Section 10.2 Remedy for Default by City.

If City defaults under this Lease, then the Lessee shall first notify City in writing of its purported breach or failure, giving City thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event City does not then so cure within said thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, City fails to commence to cure within such thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the

Lessee shall be afforded all of its rights at law or in equity, including terminating in writing this Lease (provided, however, that the indemnification provisions shall survive such termination).

ARTICLE 11.
MISCELLANEOUS

Section 11.1 Instrument Is Entire Agreement.

This Lease and the Disposition Agreement constitute the entire agreement between the Parties with respect to the matters set forth herein and completely supersede all prior understandings or agreements, both written and oral, between the Parties relating to the lease of the Property.

Section 11.2 Notices.

All notices hereunder shall be in writing signed by the Authorized Officer(s) and shall be sufficient if sent by United States first class, certified mail, postage prepaid, or express delivery service with a receipt showing the date of delivery, addressed:

if to City: City of Albany
 1000 San Pablo Avenue
 Albany, CA 94706
 Attn: City Manager

with a copy to: City of Albany
 1000 San Pablo Avenue
 Albany, CA 94706
 Attn: City Attorney

with a copy to:Goldfarb & Lipman LLP
 1300 Clay Street, 11th Floor
 Oakland, CA 94612
 Attn: Rafael Yaquian

if to Lessee: [SAHA Entity Name] , L.P.
 c/o Satellite Affordable Housing Associates
 1385 Alcatraz Avenue
 Berkeley, CA 94703
 Attn: Executive Director

With a copy to: Gubb and Barshay Attorneys at Law
 505 14th Street, Suite 450
 Oakland, CA 94612
 Attn: Scott Barshay

or any other address as either Party may have furnished to the other in writing pursuant to the requirements of this Section 11.2 as a place for service of notice. Any notice so mailed shall be deemed to have been given on the delivery date or the date that delivery is refused by the addressee, as shown on the return receipt.

Section 11.3 Non-Liability of Officials, Employees and Agents.

No supervisor, member, official, employee or agent of City shall be personally liable to the Lessee, or any successor in interest, in the event of a City default.

Section 11.4 Force Majeure.

Performance by either Party shall not be deemed to be in default where defaults are due to war; insurrection; strikes; lock-outs; 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 (including suits filed by third parties concerning or arising out of this Lease); weather or soils conditions which, in the opinion of the Lessee's contractor, will necessitate delays; inability to secure necessary labor; acts of the other Party; acts or failure to act of any public or governmental City or entity (other than the acts or failure to act of City); or any other causes (other than the Lessee's inability to obtain financing for the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. Times of performance under this Lease may also be extended in writing by City and the Lessee. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agreed to in writing by the Parties.

Section 11.5 Non-Waiver of Breach.

Neither the failure of a Party to insist upon strict performance of any of the covenants and agreements of this Lease nor the failure by the Party to exercise any rights or remedies granted to such Party under the terms of this Lease shall be deemed a waiver or relinquishment (a) of any covenant herein contained or of any of the rights or remedies of the applicable Party, (b) of the right in the future of the applicable Party to insist upon and to enforce, by any appropriate legal remedy a strict compliance with all of the covenants and conditions thereof, or (c) the right of City to recover possession of the Property upon occurrence of a default and the expiration of applicable notice and cure periods or the expiration of the Lease Term.

Section 11.6 Binding Upon Successors; Covenants to Run With Land.

This Lease shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties; provided, however, that there shall be no transfer of any interest by the Lessee except pursuant to the terms of this Lease. Any reference in this Lease to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Lease, or under law.

The terms of this Lease shall run with the land and shall bind all successors in title to the Property during the Lease Term, except that the provisions of this Lease that are specified to survive termination of this Lease shall run with the land in perpetuity and remain in full force and effect

following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property or the Improvements or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless City expressly releases the Property, the Improvements, or the applicable portion of the Property, from the requirements of this Lease.

Section 11.7 Employment Opportunity.

The Lessee and its successors, assigns, contractors and subcontractors shall not discriminate against any employee or applicant for employment in connection with the construction and operation of the Improvements because of race, color, religion, sex, sexual preference, marital status, ancestry or national origin. Each of the following activities shall be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rate of pay and other forms of compensation; and selection for training including apprenticeship.

Section 11.8 Relationship of Parties.

Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal or agent; partnership; joint venture; association; or buyer and seller. Neither the computation of any payments and other charges under the terms of this Lease nor any other provisions contained in this Lease, nor any act of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of landlord and tenant.

Section 11.9 Titles.

Any titles of the sections or subsections of this Lease are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

Section 11.10 Severability.

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

Section 11.11 Applicable Law.

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

Section 11.12 Venue.

The Superior Court of County of Alameda shall be the forum and venue for all litigation arising from this Lease.

Section 11.13 Approvals.

(a) Whenever this Lease calls for a Party's approval, consent, or waiver, the written approval, consent, or waiver of the Party's Authorized Officer(s) shall constitute the approval, consent, or waiver of the Party, without further authorization required from the Party's board. The Parties hereby authorize their Authorized Officers to deliver such approvals or consents as are required by this Lease, or to waive requirements under this Lease, on behalf of them.

(b) All approvals under this Lease shall be subject to a reasonableness standard, except where a sole discretion standard is specifically provided.

Section 11.14 Inspection of Books and Records.

The City has the right, at all reasonable times, to inspect and copy, on a confidential basis, subject to the California Public Records Act (California Government Code Section 6251 et seq.), the books, records and all other documentation of the Lessee pertaining to its obligations under this Lease. The Lessee also has the right, at all reasonable times, to inspect and copy the books, records and all other documentation of City pertaining to its obligations under this Lease. Each Party shall maintain adequate records for a period of at least five (5) years after the end of the operating year in which the records were created.

Section 11.15 Lease Binding on Successors.

This Lease shall inure to the benefit of, and shall be binding upon, City, the Lessee, and their respective permitted successors and assigns.

Section 11.16 Counterparts.

This Lease may be executed in counterparts and multiple originals, each of which shall be an original and all of which shall constitute the same instrument.

[Signature Page Follows]

BY SIGNING BELOW, the Parties confirm their agreement to the terms of this Lease as of the date first written above.

LESSEE:

[SAHA Entity Name] , L.P.,
a California limited partnership

By: [SAHA Entity Name] ,
a California [Entity Type] ,
its general partner

By: Satellite Affordable Housing
Associates, a California nonprofit
public benefit corporation, its
manager

By: _____
Susan Friedland
Executive Director

CITY:

CITY OF ALBANY, a charter City

By: _____
Nicole Almaguer, City Manager

Date: _____

APPROVED AS TO FORM:

Craig Labadie, City Attorney

EXHIBIT A

LEGAL DESCRIPTION

The land is situated in County of Alameda, State of California, and is described as follows:
(Note: The Deed of trust covers Trustor's interest in the leasehold and fee interest in the improvements)

EXHIBIT B

INSURANCE REQUIREMENTS

(a) The Lessee shall maintain the following insurance coverage throughout the Term of City Loan written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII". If the Lessee use existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Lessee agrees to amend, supplement, or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

(b) Without in anyway affecting the indemnity herein provided and in addition thereto, the Lessee shall secure and maintain the contract term the following types of insurance with limits as shown:

(1) Workers' Compensation/Employers Liability.

(A) Workers' Compensation A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Lessee and all risks to such persons under this Agreement.

(B) If the Lessee have no employees, it may certify or warrant to City that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by City's Director of Risk Management.

(C) With respect to Lessee that are non-profit corporations organized under California or federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

(2) Comprehensive General Liability. General Liability Insurance covering all operations performed by or on behalf of the Lessee providing coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000), per occurrence. The policy coverage must include:

- (A) Premises operations and mobile equipment.
- (B) Products and completed operations.
- (C) Broad form property damage (including completed operations).
- (D) Explosion, collapse, and underground hazards.
- (E) Personal injury.

(F) Contractual liability.

(G) \$2,000,000 general aggregate limit.

(3) Comprehensive Automobile Liability.

(A) Primary insurance coverage must be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol I (any auto).

(B) The policy must have a combined single limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

(C) If the Lessee is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy must have a combined single limit of Two Million Dollars (\$2,000,000) for bodily injury and property damage per occurrence.

(D) If the Lessee owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(4) Builders' Risk/Property Insurance. Builders' Risk insurance during the course of construction, and upon Completion of Construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to City, naming City as a Loss Payee, as its interests may appear. Flood insurance must be obtained if required by applicable federal regulations.

(5) Commercial Crime. Commercial crime insurance covering all officers and employees, for loss of City Loan proceeds caused by dishonesty, in an amount approved by City, naming City a Loss Payee, as its interests may appear.

(c) The Lessee shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with the Lessee or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, meeting all of the general requirements of subsections (e) and (f) below and naming City as an additional insured. The Lessee agree to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

(d) An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy must apply to bodily injury/property damage, personal injury/advertising injury and must include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage must also apply to automobile liability.

(e) The required insurance must be provided under an occurrence form, and the Lessee shall maintain the coverage described in subsections (a) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes

an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit must be three times the occurrence limits specified above.

(f) Comprehensive General Liability and Comprehensive Automobile Liability insurance policies must be endorsed to name as an additional insured City and its officers, agents, employees and members of City Counsel. The additional insured endorsements must not limit the scope of coverage for City to vicarious liability but must allow coverage for City to the full extent provided by the policy. Such additional insured coverage must be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

(g) All policies and bonds are to contain (i) the agreement of the insurer to give City at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by City; (iii) a provision that no act or omission of the Lessee shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against City and its authorized parties in connection with any loss or damage thereby insured against.

(h) Construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) in General Liability and Auto Liability coverage.

(i) The Lessee shall require the carriers of required coverages to waive all rights of subrogation against City, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Lessee and the Lessee's employees or agents from waiving the right of subrogation prior to a loss or claim. The Lessee hereby waives all rights of subrogation against City.

(j) All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by City.

(k) The Lessee shall furnish Certificates of Insurance to City Department administering the contract evidencing the insurance coverage prior to the Close of Escrow, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and the Lessee shall maintain such insurance from the time the Lessee commences performance of services hereunder until the completion of such services. Within fifteen (15) days following the close of Escrow, the Lessee shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

(l) The Lessee agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude

coverage for suits between the Lessee and City or between City and any other insured or additional insured under the policy.

(m) Any and all deductibles or self-insured retentions in excess of Ten Thousand Dollars (\$10,000) shall be declared to and approved by City's risk management agent.

(n) In the event that any policy of insurance required in this Section does not comply with the requirements, is not procured, or is canceled and not replaced, City has the right but not the obligation or duty to obtain such insurance it deems necessary and any premiums paid by City will be promptly reimbursed by the Lessee or City disbursements to the Lessee will be reduced to pay for City purchased insurance.

(o) Insurance requirements are subject to periodic review by City. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of City. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against City, inflation, or any other item reasonably related to City's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. The Lessee agree to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of City to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of City.

(p) In addition, the Lessee hereby agrees shall possess and maintain a pollution legal liability and/or environmental liability insurance policy with a minimum ten year term with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence, subject to the approval of City's Director of Risk Management (the "Pollution Liability Policy"). The required additional insured endorsement shall protect City without any restrictions or exceptions.

EXHIBIT C

PRELIMINARY TITLE REPORT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Albany
1000 San Pablo Avenue
Albany, California 94706
Attn: City Manager

No fee for recording pursuant to
Government Code Section 27383

Mail Tax Statements as Directed Above

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**
(Albany Family Housing)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") is dated as of _____, 20__, and is between the City of Albany, a charter City (the "City") and _____ [SAHA Entity Name], L.P., a California limited partnership (the "Developer").

RECITALS

A. These Recitals refer to and utilize certain capitalized terms, defined terms used but not defined in these recitals are as defined in Article 1 of this Regulatory Agreement. Capitalized terms used but not defined in this Regulatory Agreement shall have the meanings set forth in the Disposition Agreement.

B. The City owns fee title interest in certain real property in certain unimproved real property located at 755 Cleveland Avenue, the City of Albany, California, as more particularly described in Exhibit A (the "Property").

C. The Developer holds a leasehold interest in the Property.

D. Developer will develop sixty-two (62) units of affordable housing (including one unrestricted manager's unit) on the Property in order to provide increased affordable housing opportunities (the "Improvements"). The Improvements and the Property are collectively referred to as the "Development."

E. The City and the Developer have entered into the Disposition Agreement, under which the City agreed to: (1) ground lease the Property to the Developer; and (2) make the City Loan to the Developer. The City Loan funds are required to be used by the

Developer solely to finance the acquisition, construction and development of the Development.

F. Through this Regulatory Agreement the City is imposing occupancy and affordability restrictions on the Development for fifty-seven (57) years. The City has agreed to make the City Loan on the condition that the Developer construct sixty-two (62) units of affordable housing, and restrict the occupancy of the development to Extremely Low Income Households, Very Low Income Households and Low Income Households in the manner prescribed in this Regulatory Agreement.

G. The City has agreed to make the Loan on the condition that the Developer maintain and operate the Development in accordance with restrictions set forth in this Agreement and in the related documents evidencing the Loan.

H. In consideration of receipt of the City Loan from the City, and in order to ensure that the entire Development will be used and operated in accordance with these conditions and restrictions, the Developer has agreed to observe all the terms and conditions set forth below for the entire Term of this Agreement.

THEREFORE, the City and the Developer hereby agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.1 Definitions. When used in this Regulatory Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

- (a) "Actual Household Size" means the actual number of persons in the applicable household.
- (b) "Adjusted Income" means the lower of: (1) the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income; or (2) the total anticipated annual income of all persons in a household as initially calculated in accordance with 24 C.F.R. 92.203(a)(1) and, for subsequent calculations, in accordance with 24 C.F.R. 92.203(b)(1). In the event that no such program exists, the City shall provide the Owner with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.
- (c) "Agreement" has the meaning set forth in the first paragraph hereof.
- (d) "AMI" means the median gross yearly income adjusted for Actual Household Size (to qualify residents) or Assumed Household Size (to calculate rents), as applicable, in the City of Albany, California, as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a

period of at least eighteen (18) months, the City shall provide the Developer with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD

(e) "Assumed Household Size" means the assumed household size "adjusted for family size appropriate to the unit" as such term is defined in California Health and Safety Code Section 50052.5(h). The definition is utilized to calculate affordable rent and is not intended to be a limit on the number of persons occupying a unit.

(f) "Completion of Construction" means the date the construction of the Improvements is completed as evidenced by the issuance of a certificate of occupancy or equivalent document issued by the City, to certify completion of the construction of the Improvements.

(g) "Construction Loan" refers to the loan from a lender (or consortium of lenders) acceptable to the City, the proceeds of which are used to construct the Development.

(h) "County" means the County of Alameda, a political subdivision of the State of California.

(i) "City Assisted Units" means the thirty (30) units within the Development that are restricted to occupancy by Extremely Low Income Households, Very Low Income Households, and Low Income Households.

(j) "City Loan" means a loan from the City to the Developer in an amount not to exceed).

(k) "City Loan Documents" means this Regulatory Agreement, the Disposition Agreement, the Promissory Note, the Leasehold Deed of Trust, the Notice of Affordability Restriction and the Ground Lease.

(l) "Developer" means _____ [SAHA Entity Name] , L.P., a California limited partnership, and its successors and assigns to the Development.

(m) "Development" means the Property and the Development Improvements; the Development is also referred to herein as the "Development."

(n) "Development Improvements" means the sixty-two (62) units of affordable multi-family rental housing, including one (1) manager's unit, all common areas, amenities, appurtenances, improvement easements, buildings and fixtures associated with the Development, as the same may exist from time to time.

(o) "Disposition Agreement" means the Land Disposition, Development and Funding Agreement dated as of October 29, 2020, as such may be amended from time to time, entered into by and between the City and the Developer, as such may be amended.

(p) "Extremely Low Income Household" means a household with an Adjusted Income that does not exceed the qualifying limits for extremely low income households, adjusted for Actual Household Size, as established and amended from time to

time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HUD.

(q) "Extremely Low Income Rent" means the rent permitted to be charged for an Extremely Low Income Unit pursuant to Section 2.2(a) below.

(r) "Extremely Low Income Units" means the Units, which, pursuant to Section 2.1(a)(i) below, are required to be occupied by Extremely Low Income Households.

(s) "Ground Lease" means the long-term lease between the City, as landlord, and the Developer as lessee, under which the Developer leased the Property from the City.

(t) "HUD" means the United States Department of Housing and Urban Development.

(u) "Investor Limited Partner" means the tax credit limited partner or partners, and their respective successors and assigns, admitted to the Developer in connection with the allocation of low income housing tax credits to the Development, which admission will occur concurrent with closing of construction financing for development of the Development Improvements.

(v) "Leasehold Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith by and among the Developer, as trustor, Fidelity National Title Company, as trustee, and the City, as beneficiary, that will encumber the Property to secure repayment of the City Loan and the Developer's performance of the covenants set forth in the City Loan Documents.

(w) "Low Income Household" shall mean a household with an Adjusted Income that does not exceed the qualifying limits for lower income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HUD.

(x) "Low Income Rent" means the rent permitted to be charged for a Very Low Income Unit pursuant to Section 2.2(c) below.

(y) "Low Income Unit" means the Units which, pursuant to Section 2.1(a)(iii) below, are required to be occupied by Low Income Households.

(z) "Management Agent" has the meaning set forth in Section 5.2.

(aa) "Promissory Note" means the Promissory Note, of even date herewith, that evidences Developer's obligation to repay the City Loan, as such may be amended from time to time.

(bb) "Property" means approximately 5.92 acres of real Property located in unincorporated Alameda County, more particularly described in Exhibit A attached hereto and incorporated herein, and also referred to as the "Development Parcel."

(cc) "Regulatory Agreement" means this Regulatory Agreement and Declaration of Restrictive Covenants.

(dd) "Rent" means the total of monthly payments by the residents of a Unit (other than the manager's unit) for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Developer which are required of all residents, other than security deposits; the cost of an adequate level of service for utilities paid by the resident, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable TV or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Developer, and paid by the Resident. In no event shall the Rent of a Unit exceed the amount permitted by the City pursuant to Section 2.2 hereof.

(ee) "Resident" means a household occupying a Unit pursuant to a valid lease with the Developer.

(ff) "Resident Services" has the meaning set forth in Section 5.6.

(gg) "Service Provider" has the meaning set forth in Section 5.6.

(hh) "SAHA" means Satellite Affordable Housing Associates, a California nonprofit public benefit corporation.

(ii) "SAHA Affiliates" means an affiliated entity controlled by SAHA.

(jj) "Special Limited Partner" means the limited partner, and its respective successors and assigns, admitted to the Developer which admission will occur concurrent with closing of construction financing for development of the Development Improvements.

(kk) "Term" means the term of this Regulatory Agreement which commences as of the date of this Regulatory Agreement, and unless sooner terminated pursuant to the terms of this Regulatory Agreement, expires on the date fifty-five (55) years from the Completion Date.

(ll) "Units" means each of the sixty-two (62) units of affordable multi-family and intergenerational rental housing to be constructed by the Developer on the Property and shall explicitly exclude the one (1) manager's unit.

(mm) "Very Low Income Household" means a household with an Adjusted Income that does not exceed the qualifying limits for very low income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HUD.

(nn) "Very Low Income Rent" means the rent permitted to be charged for a Very Low Income Unit pursuant to Section 2.2(b) below.

(oo) "Very Low Income Units" means the Units, which, pursuant to Section 2.1(a)(ii) below, are required to be occupied by Very Low Income Households.

ARTICLE 2.
AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Occupancy Requirements.

The Developer shall regulate the use and occupancy of the Units in the following manner:

- (a) Extremely Low Income Units. During the Term, Developer shall rent two (2) studios and four (4) one-bedroom Units shall be rented to and occupied by or, if vacant, available for occupancy by Extremely Low Income Households.
- (b) Very Low Income Units. During the Term, Developer shall rent one (1) one-bedroom Units, two (2) two-bedroom Units and three (3) three-bedroom Units shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.
- (c) Low Income Units. During the Term, Developer shall rent six (6) one-bedroom Units, seven (7) two-bedroom Units and six (6) three-bedroom Units shall be rented to and occupied by or, if vacant, available for occupancy by Low Income Households.
- (d) Manager's Unit. One (1) two-bedroom unit shall be available for designation as the manager's unit.
- (e) Foreclosure Occupancy Requirements. In the event of a foreclosure of the Construction Loan prior to Construction Loan Payoff, then the City and the entity acquiring the Development at foreclosure shall apportion the affordability targeting in a manner consistent with the terms of this subsection (e). In no event will the occupancy requirements imposed after a foreclosure of the Construction Loan or deed in lieu of foreclosure require the Developer's successor in interest to provide more than: (1) six (6) Extremely Low Income Units; (2) six (6) Very Low Income Units; and (3) eighteen (18) Low Income Units (which to satisfy the minimum affordability requirements determined by the City as necessary to comply with its regulatory obligations).

Section 2.2 Allowable Rent.

- (a) Extremely Low Income Rent. Subject to Section 2.3 below, the Rent charged to Residents of the Very Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of thirty percent (30%) of AMI, adjusted for Assumed Household Size.
- (b) Very Low Income Rent. Subject to Section 2.3 below, the Rent charged to Residents of the Very Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size.
- (c) Low Income Rent. Subject to Section 2.3 below, the Rent charged to Residents of the Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of eighty percent (80%) of AMI, adjusted for Assumed Household Size.

(d) Assumed Household Size. For purposes of calculating the allowable Rent for the Units under the Health and Safety Code, the Assumed Household Sizes means the household size "adjusted for family size appropriate to the unit" as such term is defined in California Health and Safety Code Section 50052.5(h) and shall be:

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>
One	2
Two	3
Three	5

(e) Approval of Rents. Initial Rents for all Units shall be approved by the City prior to occupancy. No later than thirty (30) days after HUD publishes AMI for the City of Albany for each calendar year, the City shall provide the Developer with a schedule of permissible maximum Extremely Low Income Rent, Very Low Income Rents and Low Income Rents for the succeeding year (the "Rent Schedule"). The Rent Schedule for each calendar year shall reflect an increase or decrease in maximum permissible rents which corresponds directly to any increase or decrease in AMI for the County of Alameda from the AMI for the County of Alameda published for the previous calendar year. Under no circumstance may Developer raise rents above the permissible maximum rents as allowed under the annual rent schedule provided by the City.

(f) No Additional Fees. The Developer may not charge any fee, other than Rent, to any Resident of Units for any housing or other services provided by the Developer (other than laundry and vending services) that are not customarily charged in rental housing. All Residents must have equal access to and enjoyment of all common facilities in the Development.

(g) Occupancy. Developer shall cause the Development to be operated at all times in compliance with all applicable provisions of: (1) the Unruh Act, including but not limited to California Civil Code Sections 51.2, 51.3 and 51.4 which relate to the requirements for lawful senior housing; (2) the California Fair Employment and Housing Act, Government Code Section 12900 et seq., which relates to lawful senior housing; (3) Section 504 of the Rehabilitation Act of 1973, (4) the United States Fair Housing Act, as amended, 42 U.S.C. Section 3607(b) and 24 CFR 100.304, which relate to lawful senior housing; (5) the Americans With Disabilities Act of 1990, which relate to disabled persons access; and (6) any other applicable law or regulation. Developer shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its boardmembers, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Developer's failure to comply with applicable legal requirements related to housing for persons with disabilities and housing for seniors. The provisions of this subsection will survive expiration of the Term or other termination of this Regulatory Agreement, and remain in full force and effect.

(h) Approved Rents. Notwithstanding anything to the contrary contained in this Agreement, Subject to Sections 2.2 above, the City may not unreasonably disapprove Initial Rents and annual Rent increases in subsequent years that are less than or equal to the maximum rents, for the applicable year and established by TCAC for Tenants in an income tier under 30%, 40%, 50%, 60%, or 80% of AMI ("Tax Credit Rents"), provided, however; County shall have no approval rights over Developer's right to charge TCAC rents to the extent they are lower than rents required hereunder.

Section 2.3 Increased Income of Residents.

(a) Rent Increases. The proposed initial Rents and subsequent Rents for all Assisted Units shall be provided to the Developer by the City prior to initial or subsequent occupancy and prior to a rent increase. A schedule of current rents is attached as Exhibit B. Subject to Section 2.2(h), Developer may not impose any Rent increases on Assisted Units, without prior submission to the City of any proposed Rent increases and without written approval from the City of the proposed Rent increases. The Rent for such Assisted Units may be increased no more than once annually based upon the annual income certification described in Article 3 below and in no event shall any increase exceed the Tax Credit Rents. Tenants shall be given at least sixty (60) days written notice prior to any Rent increase. The City will provide Developer with a schedule of maximum permissible Rents for the Units annually.

(b) Increased Income Over Extremely Low Income but below Very Low Income Limit. If, upon recertification of a Resident's income, the Developer determines that a former Extremely Low Income Household's Adjusted Income has increased and exceeds the qualifying income for an Extremely Low Income Household, but has an Adjusted Income not exceeding the qualifying income for a Very Low Income Household, then, such Resident shall be permitted to retain the Unit and shall continue to be charged Extremely Low Income Rent. Upon expiration of the Resident's lease for such year and upon sixty (60) days' written notice, the Rent may be increased to the Very Low Income Rent, and such Resident's Unit may be considered a Very Low Income Unit.

(c) Increased Income Over Very Low Income but Below Low Income Limit. If, upon recertification of a Resident's income, the Developer determines that a former Very Low Income Household's Adjusted Income has increased and exceeds the qualifying income for a Very Low Income Household, but has an Adjusted Income not exceeding the qualifying income for a Low Income Household, then, such Resident shall be permitted to retain the Unit and shall continue to be charged Very Low Income Rent. Upon expiration of the Resident's lease for such year and upon sixty (60) days' written notice, the Rent may be increased to the Low Income Rent, and such Resident's Unit may be considered a Low Income Unit; subject to Section 6.18, with 60 days' advance written notice, increase such Tenant's Rent to the lesser of ((i) one-twelfth (1/12th) of thirty percent (30%) of the actual Adjusted Income of the Tenant, and (ii) the fair market rent (subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements); and (2) Rent the next available Unit to an Extremely Low Income Household or Very Low Income Household at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 above.

(d) Low Income Household. If, upon recertification of a Resident's income the Developer determines that a former Extremely Low Income Household, Very Low Income Household or Low Income Household's income has increased and exceeds the qualifying income for Low Income Households (above eighty percent (80%) of area AMI), the Resident may continue to occupy the Unit. Upon expiration of the Resident's Lease for such year, the Developer shall:

(1) Subject to Section 6.20, with sixty (60) days' advance written notice, increase such Resident's Rent to the lesser of, (i) one-twelfth (1/12) of thirty percent (30%) of the actual Adjusted Income of the Resident, and (ii) the fair market rent (subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements); and

(2) Rent the next available Unit to an Extremely Low Income Household or Very Low Income Household at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 above.

(e) Termination of Occupancy. Upon termination of occupancy of a Unit by a Resident, such Unit will be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Resident, until such unit is reoccupied, at which time categorization of the Unit will be established based on the occupancy requirements of Section 2.1 above.

Section 2.4 Units Available to the Disabled. The Developer shall construct the Development in compliance with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973; Title II and/or Title III of the Americans with Disabilities Act of 1973 (29 U.S.C. 794 et seq.); and Title 24 of the California Code of Regulations. In compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.), a minimum of six (6) Units shall be constructed to be readily accessible and usable by households with a mobility impaired member and an additional three (3) Units shall be constructed to be readily accessible and usable by households with a hearing and/or visually impaired member. Not less than thirty (30) days from the Completion of Construction, the Developer shall deliver to the City the certification required pursuant to Section 6.20 of the Disposition Agreement.

Section 2.5 Lease Provisions. Developer shall include in leases for all Units provisions which authorize Developer to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as an Extremely Low Income Household, Very Low Income Household or Low Income Household, as applicable. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits for an Extremely Low Income Household, a Very Low Income Household or Low Income Household, as applicable, such household's Rent may be subject to increase pursuant to Section 2.3 above.

Section 2.6 Condominium Conversion. During the Term of this Agreement, the Developer shall not convert any of the Units in the Development to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property.

ARTICLE 3.
INCOME CERTIFICATION AND REPORTING

Section 3.1 Income Certification.

(a) The Developer shall obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Resident renting any of the Units (excluding the manager's unit). The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying household, as the case may be, in an income certification. To verify the information, the Developer shall take one or more of the following steps as a part of the verification process: (1) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain the three (3) most current savings and checking account bank statements; (6) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (7) if the applicant is unemployed and does not have a tax return, obtain another form of independent verification. Copies of Resident income certifications shall be available to the City upon reasonable written request.

Section 3.2 Resident Selection.

(a) Before leasing any vacant Units in the Development, the Developer must provide the City for its review and approval the Developer's Management Plan, and any modification thereto, and as required under Section 7.8 of the Disposition Agreement.

(b) The Developer shall not discriminate against any applicants for tenancy on the basis of source of income or rent payment (for example, without limitation, Temporary Assistance for Needy Families (TANF) or Section 8), and Developer shall consider a prospective Resident's previous rent history of at least one (1) year, or such other time period the Developer deems reasonable, as evidence of the prospective Resident's ability to pay the applicable Rent. The ability to pay shall be demonstrated if the prospective Resident can document that the prospective Resident's gross income is at least two (2) times the prospective rent at the prospective Resident's income level. The Developer, in the reasonable exercise of its discretion, may waive the requirement that the prospective Resident's gross income equal at least two (2) times the prospective rent at the prospective Resident's income level, and admit prospective Residents with lower gross incomes.

Section 3.3 Annual Report. The Developer shall submit to the City (a) not later than the ninetieth (90th) day after the close of each calendar year, or such other later date as may be requested by the City, a statistical report, including income and rent data for all Units, setting forth the information called for therein, and (b) within fifteen (15) days after

receipt of a written request, any other information or completed forms requested by the City in order to comply with reporting requirements of the State of California, and the City.

Section 3.4 Additional Information. The Developer shall provide any additional information reasonably requested by the City with regards to the Developer or the Development. The City shall have the right to examine and make copies of all books, records or other documents of Developer which pertain to any Unit, upon reasonable prior notice to Developer and subject to all applicable tenant privacy laws.

Section 3.5 Records. The Developer shall maintain complete, accurate and current records pertaining to the Development in compliance with all applicable State and local records and accounting requirements, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Residents. All Resident lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of the Developer and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Developer shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years; provided however, records pertaining to Tenant income verifications, Rents, and Development physical inspections must be kept for the most recent five (5) year period.

Section 3.6 Annual Operating Budget. The Developer and Management Agent shall make available to the City for inspection all books and records with respect to the Development. In addition, the Developer shall provide the City with: (a) by not later than thirty (30) days prior to commencement of each calendar year, the Annual Operating Budget for the upcoming calendar year; (b) within ninety (90) days following the end of each calendar year, a report showing the actual income and expenditures with respect to the Development for the immediately preceding calendar year and the status of all reserve funds; and (c) within one hundred twenty (120) days following the end of each calendar year, a copy of the Developer's federal income tax filings for the calendar year, all in conformance with the requirements of Section 8.10(c) of the Ground Lease.

Section 3.7 On-site Inspection. The City, upon reasonable notice, shall have the right to perform, or cause to be performed, an on-site inspection of the Development at least one (1) time per year upon no less than two (2) business days' prior notice to monitor compliance with this Agreement. The Developer agrees to cooperate in such inspection.

ARTICLE 4. OPERATION OF THE DEVELOPMENT

Section 4.1 Residential Use. The Development shall be used and continuously operated and maintained as multi-family rental housing to be made available to and occupied by Extremely Low Income Households, Very Low Income Households and Low Income Households, as applicable, in conformity with this Regulatory Agreement. No part of the Development may be operated as an emergency shelter (including shelter for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential

treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories). Nothing herein shall prohibit the use of a portion of the Development for day care and/or pre-school uses and related services.

Section 4.2 Compliance with City Documents and Program Requirements. The Developer actions with respect to the Property shall at all times be in full conformity with: (a) all requirements of the City Loan Documents; and (b) any other regulatory requirements imposed on the Development.

Section 4.3 Taxes and Assessments. The Developer shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that the Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 4.4 Property Tax Exemption. Developer shall be allowed to apply to the State Board of Equalization for or obtain a welfare exemption from property taxes under any provision of law, including California Revenue and Taxation Section 214(g).

Section 4.5 Section 8 Certificate Holders. The Developer will accept as residents, on the same basis as all other prospective residents, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective residents, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Residents.

Section 4.6 Preference to City Displacees. Subject to all applicable laws, including but not limited to fair housing laws, and the rules and regulations imposed by TCAC on the low income housing tax credit program, the Developer shall give a preference in the rental of any of the Units in the Development to eligible households displaced by activity of the City. The preferences stated in this Section are required by law and shall apply to the rentals of Units in the Development throughout the Term of this Regulatory Agreement.

ARTICLE 5. PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities. The Developer is responsible for all management functions with respect to the Development, including without limitation the

selection of residents, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Development. The Developer shall retain a professional property management company, approved by the City in its reasonable discretion, to perform its management duties hereunder. A resident manager shall also be required. Pursuant to Section 7.8 of the Disposition Agreement, the Developer shall submit to the City an initial proposed Management Plan pursuant to the Schedule of Performance. The City shall approve or disapprove the proposed Management Plan in writing within fifteen (15) business days following the City's receipt of the proposed Management Plan, which approval shall not be unreasonably denied, conditioned or delayed. If the proposed Management Plan is disapproved by the City, the City shall deliver a written notice to the Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer shall have fifteen (15) business days following the receipt of such notice to submit a revised Management Plan modified any way necessary to ensure that such policies comply with the provisions of this Regulatory Agreement. The City's approval of the amendments to the Management Plan shall not be unreasonably withheld, conditioned or delayed. The Management Plan approved pursuant to Section 7.8 or Section 7.10 of the DDA shall be deemed to comply with the requirements of this Section.

Section 5.2 Management Agent; Periodic Reports. The Development shall at all times be managed by an experienced management agent reasonably acceptable to the City (as approved, the "Management Agent"), with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing. FPI Management, Inc. is pre-approved as the initial Management Agent. For any change in the Management Agent, the Developer shall submit for the City's approval the identity of any proposed Management Agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Developer in writing.

Section 5.3 Periodic Performance Review. The City reserves the right to conduct a periodic review of the management practices and financial status of the Development within thirty (30) days after each anniversary of the Completion of Construction. The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Regulatory Agreement. The Developer shall cooperate with the City in such reviews.

Section 5.4 Replacement of Management Agent.

(a) If, as a result of a periodic review, the City determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the requirements and standards of this Regulatory Agreement, the Ground Lease and the Disposition Agreement, the City shall deliver notice to the Developer of such operational issues which notice shall describe the City's findings with specificity and the City

may, in the same notice, notify the Developer of its intention to cause replacement of the Management Agent, subject to the rights of partners of the Developer. Within thirty (30) days of receipt by the Developer of such written notice, City staff and the Developer, and any partners of the Developer, shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

(b) If, after such meeting, City staff recommends in writing the replacement of the Management Agent, with the reasonable concurrence of the partners of the Developer and the Senior Lenders, the Developer shall promptly dismiss the then current Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in subsection (a) above and approved by the City pursuant to Section 5.2 above. The replacement Management Agent or on-site resident manager shall be approved the City pursuant to Section 5.2 above and shall be subject to the concurrent approval of the Investor Limited Partner and Senior Lenders.

(c) Any contract for the operation or management of the Development entered into by the Developer shall provide that the Management Agent may be dismissed and the contract terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a Developer Event of Default under this Regulatory Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.7.

Section 5.5 Approval of Management Plan Modifications. Each year, within sixty (60) days of the end of the calendar year, the Developer shall submit to the City any proposed changes to the Management Plan. The City shall approve or disapprove the proposed changes to the Management Plan in writing within fifteen (15) business days following the City's receipt of the request to amend the Management Plan, which approval shall not be unreasonably denied, conditioned or delayed. If the change to the Management Plan is disapproved by the City, the City shall deliver a written notice to the Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer shall have fifteen (15) business days following the receipt of such notice to submit a revised Management Plan modification in any way necessary to ensure that such policies comply with the provisions of this Regulatory Agreement. The City's approval of the amendments to the Management Plan shall not be unreasonably withheld, conditioned or delayed.

Section 5.6 Tenant Service Provider.

(a) The Developer will be providing on-site services which Developer will make available to all Tenants in the Development (the "Tenant Services"). The Developer must submit to the City for approval the name and qualifications of any proposed service provider (the "Service Provider"). The City hereby approves _____, as the initial Service Provider for the Development.

(b) The Service Provider must demonstrate the ability to provide Tenant Services in residential facilities like the Development in an effective manner. The Developer must submit such additional information about the background, experience and financial condition of any proposed Service Provider as is reasonably necessary for the City to

determine whether the proposed Service Provider meets the standards for a qualified Service Provider of developments of this type.

(c) If the proposed Service Provider meets the standard for a qualified Service Provider set forth above, the City shall approve the proposed Service Provider by notifying Developer in writing. Unless the proposed Service Provider is disapproved in writing by the City within thirty (30) days, which disapproval is to state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 5.7 Property Maintenance.

(a) The Developer agrees, for the entire Term of this Regulatory Agreement, to maintain all interior and exterior improvements, including landscaping, of the Development in good and sanitary condition and repair (and as to landscaping, in a healthy condition) consistent with quality affordable housing developments owned or operated by SAHA or SAHA Affiliates (as defined in Section 1.1 of the Disposition Agreement) and in accordance with a Management Plan approved pursuant to Section 5.5 of this Regulatory Agreement (including without limitation any landscape and signage plans), as the same may be amended from time to time, and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials and in a decent, safe, sanitary condition and in good repair.

(b) The Developer acknowledges the great emphasis the City places on quality maintenance to protect its investment and to provide quality low-income housing for area residents and to ensure that Count assisted affordable housing projects are not allowed to deteriorate due to deficient maintenance. In addition, the Developer shall keep the Development free from all graffiti, and any accumulation of shopping carts, debris or waste material. Normal wear and tear of the Development will be acceptable to the City assuming Developer agrees to provide all necessary improvements to assure the Development is maintained in good condition. The Developer shall promptly make all repairs and replacements necessary to keep the Development in good and sanitary condition and repair (and as to landscaping, in a healthy condition) consistent with similarly situated quality affordable housing developments owned or operated by SAHA or SAHA Affiliates and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable materials.

(c) In the event that the Developer breaches any of the covenants contained in this Section and such default continues for a period of seven (7) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Development Parcel and perform or cause to be performed all such acts and work necessary to cure the default, or if a period longer than seven (7) and thirty (30) days is reasonably necessary to correct the deficiency, respectively, then the Developer shall begin to correct the deficiency within seven (7) and thirty (30) days, respectively, and correct the deficiency as soon as reasonably possible. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon

the Development Parcel and perform all acts and work necessary to protect, maintain, and preserve the Development Improvements and landscaped areas on the Development Parcel, and to attach a lien on the Development Parcel, or to assess the Development Parcel, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by the Developer to the City upon demand.

(d) The conditions and obligations set forth in this Section shall run with the Development Parcel and shall apply for the entire Term of this Regulatory Agreement.

Section 5.8 Safety Conditions.

(a) The Developer acknowledges that the City places a prime importance on the security of County assisted projects and the safety of the residents and surrounding community. The Developer agrees to implement and maintain throughout the Term the following security measures in the Development:

(1) To the extent feasible employ defensible space design principles and crime prevention measures in the operation of the Development including but not limited to maintaining adequate lighting in parking areas and pathways;

(2) Provide added security including dead-bolt locks for every entry door, and where entry doors are damaged, replace them with solid-core doors.

(b) The City shall have the right to enter on the Property and/or contact the City Sheriff's Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Residents and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition.

Section 5.9 Insurance. The Developers shall maintain the insurance coverage required under Section 7.11 of the Disposition Agreement throughout the Term.

ARTICLE 6.
MISCELLANEOUS

Section 6.1 Term. The provisions of this Regulatory Agreement shall apply to the Property for the entire Term even if the entire City Loan is paid in full prior to the end of the Term. This Regulatory Agreement shall bind any successor, heir or assign of Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City makes the City Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

Section 6.2 Lease Provisions. In newly leasing the Units within the Development, Developer shall use a form of written lease reasonably approved by the City. The form of

lease must comply with all requirements of this Regulatory Agreement, the other City Loan Documents and must, among other matters:

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

(b) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Resident and the Developer, and provide for no increase in Rent during such year. Developer will provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Resident, and with such further notice as may be required by Section 2.3 above. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of Developer and the Resident. Notwithstanding the above, any rent increases are subject to the requirements of Section 2.3 above.

(c) Include a provision which requires a Resident who is residing in a Unit required to be accessible pursuant to Section 7.20 of the Disposition Agreement and who is not in need of an accessible Unit to move to a non-accessible Unit when a non-accessible Unit becomes available and another Resident or prospective Resident is in need of an accessible Unit.

Section 6.3 Lease Termination. Any termination of a lease or refusal to renew a lease for a Unit within the Development must be preceded by prior written notice (specifying the grounds for the action) from the Developer to the Resident and such notice must be given in conformance with California Civil Code Section 1946.1(b).

Section 6.4 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. Developer shall not give preference to any particular class or group of persons in renting the Units, except to the extent that the Units are required to be leased to Extremely Low Income Households, Very Low Income Households or Low Income Households, or pursuant to Section 4.6 above. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income, disability, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Developer or any person claiming under or through the Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of residents, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit. Developer shall, to the extent applicable, comply with Executive Orders 11246, 11375, 11625, 12138, 12431, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted. All deeds, leases or contracts made or

entered into by Developer as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the Disposition Agreement.

Section 6.5 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Developer shall provide by first-class mail, postage prepaid, a notice to all Residents containing: (1) the anticipated date of the expiration of the Term; (2) any anticipated increase in Rent upon the expiration of the Term; (3) a statement that a copy of such notice will be sent to the City, and (4) a statement that a public hearing may be held by the City on the issue and that the Resident will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Developer shall also file a copy of the above-described notice with the City Manager.

(b) In addition to the notice required above, Developer shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11, as such may be amended from time to time. Such notice requirements may include: (1) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a), which would include the City's Housing Director) prior to the expiration of the Term; (2) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (3) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (4) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

Section 6.6 Covenants to Run With the Land. The City and Developer hereby declare their express intent that the covenants and restrictions set forth in this Regulatory Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Regulatory Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Regulatory Agreement.

Section 6.7 Enforcement by the City. If Developer fails to perform any obligation under this Regulatory Agreement, and fails to cure the default within thirty (30) days after the City has notified the Developer in writing of the default or, if the default cannot be cured within thirty (30) days, and Developer has failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure, the City shall have the right to enforce this Regulatory Agreement by any or all of the following actions, or any other remedy provided by law:

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

(b) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the Developer's performance of its obligations under this Regulatory Agreement, and/or for damages.

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

(d) Cure by Investor Limited Partner. County hereby agrees to accept a cure of any default made or tendered hereunder by Investor Limited Partner or Special Limited Partner on the same terms and conditions as if such cure was made or tendered by the Developer.

Section 6.8 Attorney's Fees and Costs. In any action brought to enforce this Regulatory Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorney's fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.9 Recording and Filing. The City and the Developer shall cause this Regulatory Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the City of Albany.

Section 6.10 Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California.

Section 6.11 Waiver of Requirements. Any of the requirements of this Regulatory Agreement may be expressly waived by the City in writing, but no waiver by the City of any requirement of this Regulatory Agreement extends to or affects any other provision of this Regulatory Agreement, and may not be deemed to do so.

Section 6.12 Amendments. This Regulatory Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the City of Albany, California.

Section 6.13 Notice.

(a) Formal notices, demands, and communications between parties delivered under this Regulatory Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery; or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

City:

City of Albany
1000 San Pablo Avenue
Albany, CA 94706
Attn: City Manager

with a copy to:

Goldfarb & Lipman, LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Rafael Yaquian

Developer:

Satellite Affordable Housing Associates
1385 Alcatraz Avenue
Berkeley, CA 94703
Attn: Chief Executive Officer

with a copy to:

Gubb and Barshay, LLP
505 14th St, Suite 450
Oakland, CA 94612
Attn: Scott Barshay

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

(b) A copy of all notices delivered to the Developer hereunder shall be delivered simultaneously to the Investor Limited Partner. Within a reasonable period of time after admission to the Developer, Investor Limited Partner shall provide its notice address in writing to the City at the address provided above.

Section 6.14 Severability. If any provision of this Regulatory Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Regulatory Agreement shall not in any way be affected or impaired thereby.

Section 6.15 Multiple Originals; Counterparts. This Regulatory Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 6.16 Hold Harmless. The Developer will indemnify and hold harmless (without limit as to amount) the City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of, or relating in any manner to the Development, or the Developer's performance or non-performance under this Agreement, and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent caused by the gross negligence or willful misconduct of the City or any Indemnitees. The provisions of this section shall survive expiration or other termination of this Regulatory Agreement or any release of part or all of the Property from the burdens of this Regulatory Agreement, and the provisions of this section shall remain in full force and effect

Section 6.17 Revival of Agreement after Foreclosure. In the event there is a foreclosure of the Property, this Regulatory Agreement will revive according to its original terms if, during the Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties (excluding any entity affiliated with the Investor Limited Partner), obtains an ownership interest in the Development or Property.

Section 6.18 Tax Credit Program. Notwithstanding anything contained herein to the contrary, for as long as the Property is subject to the requirements of the California and/or Federal Low-Income Housing Tax Credit Program under the provisions of Section 42 of the Code and Section 23610.5 of the California Revenue and Taxation Code, as applicable (collectively, the "Tax Credit Program") and there is a conflict between the requirements of the Tax Credit Program and the affordability provisions set forth in 2.3 above, inclusive, then the provisions of the Tax Credit Program shall prevail. That notwithstanding, the fact that this Regulatory Agreement and the Tax Credit Program provide for greater, lesser or different obligations or requirements shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

Section 6.19 Subordination. This Agreement shall not be subordinated.

Section 6.20 Assignment by the City. The City may assign its rights and obligations under the Loan Documents to any other public entity without the consent of the Borrower.

Section 6.21 No Claims. Nothing contained in this Agreement shall create or justify any claim against the City by any person that the Borrower may have employed or with whom the Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction or operation of the Improvements.

Section 6.22 Titles of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 6.23 No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

Section 6.24 Entire Agreement. This Agreement constitutes the entire Agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto.

[Signature Page Follows]

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

DEVELOPER:

Satellite Affordable Housing Associates, a California
nonprofit public benefit corporation

By: _____
Susan Friedland, Chief Executive Officer

[Signature Page Continues]

CITY:

CITY OF ALBANY, a California charter City

By: _____
Nicole Almaguer, City Manager

APPROVED AS TO LEGAL FORM:

By: _____
Rafael Yaquian, Special Counsel

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, _____, 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.

Name: _____
Notary Public

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, _____, 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.

Name: _____
Notary Public

EXHIBIT A

PROPERTY DESCRIPTION

The land referred to herein below is situated in the County of Alameda, State of California, and is described as follows:

PROMISSORY NOTE
(Albany Family Housing)

\$5,056,094

City of Albany, California
_____, 20__

FOR VALUE RECEIVED, [SAHA Entity Name] , L.P., a California limited partnership (the "Borrower", promises to pay to the City of Albany, a charter City (the "City"), or order, the principal sum of up to Five Million Fifty-Six Thousand and Ninety-Four Dollars (\$5,056,094) (the "City Loan"), or so much as is disbursed to Borrower, plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences the Borrower's obligation to pay the City the principal amount of up to Five Million Fifty-Six Thousand and Ninety-Four Dollars (\$5,056,094), for funds loaned to the Borrower by the City to finance the acquisition and predevelopment activities of the Development pursuant to that certain Disposition, Development and Funding Agreement by and among the Borrower's predecessor in interest, Satellite Affordable Housing Associates, a California nonprofit public benefit corporation, dated as of October 29, 2020 (the "Disposition Agreement"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Disposition Agreement.

2. Interest.

(a) Interest Rate. Subject to the provisions of Section (b) below, the outstanding principal balance of the City Loan shall not bear interest.

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

3. Term and Repayment Requirements.

(a) The term of the City Loan shall commence on the date of this Note and shall expire fifty-seven (57) years from the first date, but in no event later than _____, 20__.

(b) This Note shall be due and payable as set forth in Section 3.5 of the Disposition Agreement. Repayment of this Note shall be non-recourse to the Borrower pursuant to Section 3.11 of the Disposition Agreement.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City as provided in the Disposition Agreement.

5. Security. This Note is secured by the Leasehold Deed of Trust recorded against the Borrower's leasehold interest in the Property and is secured by the Assignment Agreement (as defined in the Disposition Agreement).

6. Terms of Payment.

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

(b) All payments on this Note shall be paid to the City at 1000 San Pablo Ave., Albany, CA 94706, Attention: City Manager or to such other place as the City may from time to time designate in writing.

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

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

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

7. Default.

(a) Any of the following shall constitute an Event of Default under this Note:

(1) Any failure to pay, in full, any payment required under this Note when due following written notice by the City of such failure and fifteen (15) days opportunity to cure;

(2) Any failure in the performance by the Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in Section 10.4(a) of the Disposition Agreement; and

(3) The occurrence of any Event of Default under the Disposition Agreement, the Leasehold Deed of Trust, or the Regulatory Agreement, or other instrument

securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the City pursuant to the Disposition Agreement or the Leasehold Deed of Trust, subject to notice and cure periods, if any, set forth therein.

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

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

8. Waivers.

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

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

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

9. Miscellaneous Provisions.

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

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

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

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

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

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of _____
____, 20 .

DEVELOPER:

[SAHA Entity Name] , L.P.,
a California limited partnership

By: [SAHA Entity Name] ,
a California [Entity Type] ,
its general partner

By: Satellite Affordable Housing
Associates, a California nonprofit
public benefit corporation, its
manager

By: _____
Susan Friedland
Chief Executive Officer

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Albany
1000 San Pablo Avenue
Albany, California 94706
Attn: City Manager

No fee for recording pursuant to
Government Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**
(Albany Family Housing)

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Leasehold Deed of Trust") is made as of _____, 20__, by and [SAHA Entity Name] , L.P., a California limited partnership ("Trustor"), Old Republic Title Company, a California corporation ("Trustee"), and City of Albany, a charter City ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's interest in an approximately 1.13 acres located at 755 Cleveland Avenue in the City of Albany, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

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

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

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

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

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

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

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

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

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

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS (the "Secured Obligations).

(a) Payment of just indebtedness of Trustor to Beneficiary as set forth in the City Note (defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the City Note. Said City Note and all its terms are

incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

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

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the City Loan Documents (defined in Section 1.2 below).

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

ARTICLE 1. DEFINITIONS

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

Section 1.1 The term "Disposition Agreement" means that certain Disposition, Development and Funding Agreement between, among others, Trustor and Beneficiary, dated as of October 29, 2020, as such may be amended, providing for the Beneficiary to loan to the Trustor up to Five Million Fifty-Six Thousand and Ninety-Four Dollars (\$5,056,094) for the acquisition of the Property and predevelopment activities for the Development.

Section 1.1 The term "City Loan Documents" means this Leasehold Deed of Trust, the Note, the Disposition Agreement, the Regulatory Agreement, the Ground Lease, the Notice of Affordability Restrictions, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.2 The term "Ground Lease" means that certain Ground Lease, by and between Trustor and Beneficiary dated and recorded in the official Records of Alameda County concurrently herewith.

Section 1.3 The term "Note" means the promissory note in the principal amount not to exceed Five Million Fifty-Six Thousand and Ninety-Four Dollars (\$5,056,094), dated of even date herewith, executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Leasehold Deed of Trust (The Note is on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.).

Section 1.4 The term "Notice of Affordability Restrictions" means the Notice of Affordability Restrictions on Transfer of Property by and between the Beneficiary and the Trustor, dated and recorded in the official Records of Alameda County concurrently herewith.

Section 1.5 The term "Principal" means the amount required to be paid under the Note.

Section 1.6 The term "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants by and between the Beneficiary and the Trustor, dated and recorded in the official Records of Alameda County concurrently herewith.

ARTICLE 2.
MAINTENANCE AND MODIFICATION
OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

(a) The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

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

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

Section 2.2 Granting of Easements. Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, cable, telephone and telegraph, or those required by law and as approved, in writing, by Beneficiary.

Section 2.3 Assignment of Rents.

(a) As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the City Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the sums secured by this Leasehold Deed of Trust with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the City Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

(b) Except as previously approved by the Beneficiary as set forth in the Disposition Agreement or otherwise approved in writing by Beneficiary, Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section, and that at the time of execution of this Leasehold Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents.

Trustor further covenant that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

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

(d) All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the City Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this Leasehold Deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section.

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

(f) Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Leasehold Deed of Trust ceases to secure indebtedness held by Beneficiary. The rights of the Beneficiary under this Section are subject to the rights of any approved Senior Lender as defined in Section 3.10 of the Disposition Agreement.

ARTICLE 3.
TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

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

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

Section 3.2 Provisions Respecting Insurance.

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

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

Section 3.3 Advances. In the event the Trustor shall fail to maintain the full insurance coverage required by this Leasehold Deed of Trust or shall fail to keep the Security in accordance with the City Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Beneficiary, may (but shall be under no obligation to) take out the required policies of

insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

ARTICLE 4.
DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages. Subject to the rights of any Senior Lender and the Ground Lease, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of: (i) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain; (ii) any damage to or destruction of the Property or in any part thereof by insured casualty; and (iii) any other injury or damage to all or any part of the Property ("Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. Subject to the rights of any Senior Lender and the Ground Lease, the Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Leasehold Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition, and Beneficiary agrees to release Funds to Trustor to rebuild the Project on the Property provided Trustor demonstrates to Beneficiary that such rebuilding is economically feasible. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Leasehold Deed of Trust. The rights of the Beneficiary under this Section are subject to the rights of any Senior Lender and the terms of the Ground Lease.

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

Section 5.1 Other Agreements Affecting Property. The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the City Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses. In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Leasehold Deed of

Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Leasehold Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of the Principal. The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property. To the maximum extent permitted by law, the personal property subject to this Leasehold Deed of Trust shall be deemed to be fixtures and part of the real property and this Leasehold Deed of Trust shall constitute a fixtures filing under the California Uniform Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Leasehold Deed of Trust shall constitute a security agreement under the California Uniform Commercial Code.

Section 5.5 Financing Statement. The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security. The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Leasehold Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the City Loan Documents. Notwithstanding anything to the contrary, leases to tenants in accordance with the Regulatory Agreement shall not be considered a transfer of the any portion of the Security.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon forty-eight (48) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 5.8 Nondiscrimination.

(a) The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons, on account of 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.

(b) Notwithstanding the preceding paragraph, with respect to familial status, the preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the preceding paragraph. The foregoing covenants shall run with the land.

(c) The terms of this Section shall run with the land and survive the termination of this Agreement.

ARTICLE 6. HAZARDOUS WASTE

Section 6.1 Hazardous Waste.

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

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

adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor agrees to indemnify, protect, hold harmless and defend (by counsel reasonably selected by the Beneficiary) the Beneficiary, its governing board members, officers, representatives, agents, assigns and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (i) the failure of the Trustor or any other person or entity to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Affordable Development on or after the date of conveyance of the Property to the Trustor; (ii) the presence in, on or under the Affordable Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Affordable Development to the extent it arises on or after the date of conveyance of the Property to the Trustor; (iii) any activity carried on or undertaken on or off the Affordable Development, subsequent to the conveyance of the Property to the Trustor, and whether by the Trustor or any successor in title or any employees, agents, contractors or subcontractors of the Trustor or any successor in title, or any third persons at any time occupying or present on the Affordable Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Affordable Development; the foregoing indemnity shall further apply to any residual contamination on or under the Affordable Development, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

(d) Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgement, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken.

(e) Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

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

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

(h) The Trustor is aware that California Civil Code Section 2955.5(a) provides as follows: "No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property."

ARTICLE 7.
EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. The following shall constitute Events of Default following the expiration of any applicable notice and cure periods: (1) failure to make any payment to be paid by Trustor under the City Loan Documents; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the City Loan Documents, including, without limitation, the provisions concerning discrimination; (3) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein.

Section 7.2 Acceleration of Maturity. If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid Principal of the Note shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the City Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 Beneficiary's Right to Enter and Take Possession. If an Event of Default shall have occurred and be continuing, the Beneficiary may:

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

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

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

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

Section 7.4 Foreclosure by Power of Sale.

(a) Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "Notice of Default and Election to Sell") and shall deposit with Trustee this Leasehold Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

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

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

(d) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver. If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Beneficiary by this Leasehold Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

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

(b) If the Beneficiary: (i) grants forbearance or an extension of time for the payment or performance of the Secured Obligations; (ii) takes other or additional security or the payment of any sums secured hereby; (iii) waives or does not exercise any right granted in the City Loan Documents; (iv) releases any part of the Security from the lien of this Leasehold Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the City Loan Documents; (v) consents to the granting of any easement or other right affecting the Security; or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Leasehold Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Leasehold Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security. The Beneficiary shall have power to: (i) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Leasehold Deed of Trust; (ii) preserve or protect its interest (as described in this Leasehold Deed of Trust) in the Security; and (iii) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 7.10 Waiver. The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any Secured Obligations or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Leasehold Deed of Trust.

ARTICLE 8.
MISCELLANEOUS

Section 8.1 Amendments. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee. Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and upon surrender of this Leasehold Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices. If at any time after the execution of this Leasehold Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid; and if intended for Beneficiary shall be addressed to:

Beneficiary:

City of Albany
1000 San Pablo Avenue
Albany, California 94700
Attn: City Manager

with a copy to:

Goldfarb & Lipman, LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Rafael Yaquian

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

[SAHA Entity Name] , L.P.,
c/o Satellite Affordable Housing Associates
1835 Alcatraz Avenue
Berkeley, CA 94703
Attn: Susan Friedland

with a copy to:

Gubb and Barshay Attorneys at Law
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Scott Barshay

Investor Limited Partner: At the address to be provided.

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

Copies of notices to Trustor from the Beneficiary shall also be provided by the Beneficiary to any limited partner of Trustor who requests such notice in writing and provides the Beneficiary with written notice of its address in accordance with this Section.

Section 8.4 Successors and Joint Trustors. Where an obligation created herein is binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Leasehold Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligations of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligations of each and every entity and person comprising Trustor.

Section 8.5 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Leasehold Deed of Trust.

Section 8.6 Invalidity of Certain Provisions. Every provision of this Leasehold Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Leasehold Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the

debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Leasehold Deed of Trust.

Section 8.7 Governing Law. This Leasehold Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8 Gender and Number. In this Leasehold Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage. Any reference in this Leasehold Deed of Trust to a mortgage shall also refer to a Leasehold Deed of Trust and any reference to a Deed of Trust shall also refer to a mortgage.

Section 8.10 Actions. Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Leasehold Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations. The pleading of any statute of limitations as a defense to any and all obligations secured by this Leasehold Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee. Trustee accepts this Trust when this Leasehold Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Leasehold Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

[Signature Page Follows]

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

TRUSTOR:

[SAHA Entity Name] , L.P., a California limited partnership

By: [SAHA Entity Name] ,
a California [Entity Type] ,
its general partner

By: Satellite Affordable Housing
Associates, a California nonprofit
public benefit corporation, its
manager

By: _____
Susan Friedland
Chief Executive Officer

[Signatures Must Be Notarized]

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, _____, 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.

Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land is situated in the County of Alameda, State of California, and is described as follows:

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Albany
1000 San Pablo Avenue
Albany, California 94706
Attn: City Manager

No fee for recording pursuant to
Government Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**MEMORANDUM OF DISPOSITION, DEVELOPMENT
AND FUNDING AGREEMENT**

THIS MEMORANDUM OF DISPOSITION, DEVELOPMENT AND FUNDING AGREEMENT (the "Memorandum") is made as of _____, 20__, by and between the City of Albany, a charter City (the "City") and _____ [SAHA Entity Name], L.P., a California limited partnership (the "Grantee"), to confirm that parties have entered into that certain Disposition, Development and Funding Agreement dated as of October 29, 2020, as such may be amended as may be from time to time (the "Agreement"). The Agreement imposes certain conditions (including but not limited to, construction requirements, operating and use restrictions and covenants, and transfer restrictions) on the real property located at 755 Cleveland Avenue in the City of Albany, CA 94706, and described in Exhibit A attached hereto and incorporated herein (the "Site"). The Agreement is a public document and may be reviewed at the principal office of the City.

This Memorandum shall incorporate herein all of the terms and provisions of the Agreement as though fully set forth herein. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Agreement, of which this is a memorandum.

This Memorandum may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

AFFORDABLE DEVELOPER:

[SAHA Entity Name] , L.P.,
a California limited partnership

By: [SAHA Entity Name] ,
a California [Entity Type] ,
its general partner

By: Satellite Affordable Housing
Associates, a California nonprofit
public benefit corporation, its
manager

By: _____
Susan Friedland
Chief Executive Officer

[SIGNATURE PAGE CONTINUES]

[SIGNATURES MUST BE NOTARIZED]

GRANTEE:

CITY OF ALBANY, a charter City

By: _____

Nicole Almaguer, City Manager

Date: _____

APPROVED AS TO LEGAL FORM:

Craig Labadie

City Attorney

By: _____

Date: _____

[SIGNATURES MUST BE NOTARIZED]

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, _____, 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.

Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land is situated in the County of Alameda, State of California, and is described as follows:

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Albany
1000 San Pablo Avenue
Albany, California 94706
Attn: City Manager

No fee for recording pursuant to
Government Code Section 27383

Mail Tax Statements as Directed Above

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF AFFORDABLE HOUSING LEASE
(Albany Family Housing)

THIS MEMORANDUM OF AFFORDABLE HOUSING LEASE (the "Memorandum") is made as of _____, 20__, by and between the City of Albany, a charter City (the "Lessor"), and _____ [SAHA Entity Name] , L.P., a California limited partnership ("Lessee") with respect to that certain Ground Lease dated _____, 20__ (the "Lease"), between Lessor and Lessee.

Pursuant to the Lease, Lessor hereby leases to Lessee and Lessee leases from Lessor certain unimproved real property located at 755 Cleveland Avenue, the City of Albany, California, more specifically described on Exhibit A attached hereto (the "Leased Premises"), upon which Lessee has agreed to construct a multifamily rental housing development to be known as Washington Street Apartments (the "Development").

The Lease commences on the date on which this Memorandum is recorded against the Leased Premises (the "Commencement Date"). The Lease shall continue in full force and effect for a term (the "Term"), commencing on the Commencement Date, and expiring on the ninety-ninth (99th) anniversary of the Commencement Date, but in no event later than _____, 2__.

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

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

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

LESSEE:

[SAHA Entity Name] , L.P.,
a California limited partnership

By: [SAHA Entity Name] ,
a California [Entity Type] ,
its general partner

By: Satellite Affordable Housing
Associates, a California nonprofit
public benefit corporation, its
manager

By: _____
Susan Friedland
Chief Executive Officer

LESSOR:

CITY OF ALBANY, a charter City

By: _____
Nicole Almaguer, City Manager

Date: _____

APPROVED AS TO LEGL FORM:

Craig Labadie
City Attorney

By: _____

Date: _____

[Signatures Must Be Notarized]

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, _____, 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.

Name: _____

Notary Public

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, _____, 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.

Name: _____

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

Real property in the County of Alameda, State of California, described as follows:

EXHIBIT J

FORM OF RESIDUAL RECEIPTS REPORT

Residual Receipts Report
for the Year Ending _____

Date Prepared: _____, 20__

Please complete the following information and execute the certification at the bottom of this form.

Annual Operating Income

Please report Annual Operating Income for the year ending _____ on the following lines:

Rent Payments received (including Section 8 tenant assistance payments, if any) (1) \$ _____

Interest Income (do not include interest income from replacement and operating reserves nor interest income on tenant security deposits) (2) \$ _____

Additional Income Related to Project Operations (for example, vending machine income, tenant forfeited deposits, laundry income not paid to the residents' association, business interruption insurance casualty insurance, not used to rebuild) (3) \$ _____

Total Annual Operating Income (Add lines 1, 2, and 3) (4) \$ _____

Operating Expenses

Please report Operating Expenses incurred in relation to the operations of the Project for the year ending _____, on the following lines:

Operating and Maintenance Expenses (5) \$ _____

Utilities (6) \$ _____

Fees and licenses (7) \$ _____

Property management Expenses and On-Site Staff Payroll (8) \$ _____

Administrative Expenses Incurred by Project

Property/Possessory Interest Taxes	(9)	\$ _____
Insurance	(10)	\$ _____
Other Expenses Related to Operations of the Project	(11)	\$ _____

Total Annual Operating Expenses (Add Lines 5, 6, 7, 8, 9, 10, and 11)	(12)	\$ _____
Net Operating Income (Subtract Line 12 from Line 4)	(13)	\$ _____

Do not include expense unrelated to the Project's operations, such as depreciation, amortization, accrued principal and interest expense on deferred payment debt, or capital expenditures paid from withdrawals from the Replacement Reserves or other reserve accounts.

Additional Cash Flow Payments

Obligated Debt Service Payments (as approved by the City and other parties that may have such approval rights)	(14)	\$ _____
Scheduled Deposits Capital and Operating Reserves (as approved by the City)	(15)	\$ _____
Additional Payment Obligations (i.e. additional Resident Services, Deferred Developer Fee)	(16)	\$ _____
Total Additional Cash Flow Payments (Add lines 14, 15 and 16)	(17)	\$ _____
Residual Receipts for Year Ending _____ (Subtract Line 17 from Line 13)	(18)	\$ _____
Percentage of Residual Receipts to be Paid to the City	(19)	\$ _____
Amount Payable to the City (Multiply Line 18 by Line 19)	(20)	\$ _____

The following certification should be executed by the Executive Director or Chief Financial Officer of the Borrower, or the Managing General Partner of the Borrower.

I certify that the information provided in this form is true, accurate, and correct in all respects.

Date

By: _____
(Print Name)

Its: _____
(Title)

[ADD COUNTY RECORDER'S COVER SHEET]

FORM OF CERTIFICATE OF COMPLETION

CERTIFICATE OF COMPLETION
(Albany Family Housing)

Pursuant to Section 6.13 of that certain Land Disposition, Development and Funding Agreement dated as of October 29, 2020, a memorandum of which is recorded in the official records (the "Official Records") on _____, 20__ as document number _____, as such may be amended (the "Disposition Agreement"), entered into by and between the City of Albany (the "City"), and [SAHA Entity Name], L.P., a California limited partnership, the City certifies that the lessee (the "Lessee") of the real property more particularly described in Exhibit A (the "Property") has met its obligations under Article 7 of the Disposition Agreement regarding the construction of certain improvements on the Property, and has met its various obligations specified in Article 4, Article 5, and Article 6.

This Certificate of Completion shall serve as conclusive evidence that the Lessee has completed construction and development of all the improvements on the Property, including on-site and off-site improvements, required under Article 7 of the Disposition Agreement and has met its various obligations specified in Article 4, Article 5, and Article 6.

All other rights, remedies and controls of the City with respect to the requirements of the Disposition Agreement not listed above, shall continue for the Term of the Disposition Agreement or as otherwise specified therein.

This Certificate of Completion shall not constitute evidence of compliance with, or satisfaction of, any obligation of the Lessee to any holder of a Security Financing Interest, including, but not limited to, the holder of a deed of trust securing money loaned to finance the Property, or any part thereof, and shall not be deemed to be either a notice of completion under the California Civil Code or a certificate of occupancy. This Certificate of Completion shall not constitute evidence of compliance with the prevailing wage requirements of California Labor Code Sections 1720 et seq., or the requirements set forth in Section 6.10 of the Disposition Agreement.

Capitalized terms used in this Certificate of Completion which are not defined herein shall have the meanings given such terms in the Disposition Agreement.

[Signature Page Follows]

CITY:

CITY OF ALBANY, a charter City

By: _____
Nicole Almaguer, City Manager

APPROVED AS TO LEGAL FORM:
Craig Labadie
City Attorney

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The land is situated in the State of California, County of Alameda, and is described as follows:

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, _____, 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.

Name: _____
Notary Public

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

City of Albany
1000 San Pablo Avenue
Albany, California 94706
Attn: City Manager

NO FEE FOR RECORDING PURSUANT TO
GOVERNMENT CODE SECTIONS 6103 AND 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**NOTICE OF AFFORDABILITY RESTRICTIONS
ON TRANSFER OF PROPERTY**
(Albany Family Housing)

NOTICE IS HEREBY GIVEN, that the City of Albany (the "City"), acting as the housing successor to the dissolved Albany Redevelopment Agency of the pursuant to Health and Safety Code Section 34176, to carry out certain obligations under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*), has required _____ L.P., a California limited partnership (the "Developer" and the "Owner") to enter into certain affordability covenants and restrictions contained in that certain Land Disposition, Development and Funding Agreement (the "Disposition Agreement") and that certain Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement" and collectively with the Disposition Agreement, the "Restrictions"), with reference to a housing development (the "Development") situated on that certain leasehold property (the "Property"), located in the County of Alameda, at 755 Cleveland Avenue in the City of Albany, CA 94706, Assessor's Parcel No. _____, and further described in Exhibit A incorporated herein by reference.

The affordability covenants and restrictions contained in the Restrictions include without limitation and as further described in the Restrictions:

1. A requirement for the Owner to construct sixty-two (62) units of affordable housing, to be occupied in the following manner:

(i) Extremely Low Income Units. Two (2) studio units and four (4) one-bedroom Units shall be rented to and occupied by or, if vacant, available

for occupancy by Extremely Low Income Households at an affordable housing cost.

(ii) Very Low Income Units. One (1) one-bedroom Unit, two (2) two-bedroom Units and three (3) three-bedroom Units shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households at an affordable housing cost.

(iii) Low Income Units. Six (6) one-bedroom Units, seven (7) two-bedroom Units and six (6) three-bedroom Units shall be rented to and occupied by or, if vacant, available for occupancy by Low Income Households at an affordable housing cost.

(iv) Manager's Unit. One (1) two-bedroom unit shall be available for designation as the manager's unit.

2. Additional requirements concerning operation, management, and maintenance of the Development are also imposed by the Restrictions.

In the event of any conflict between this Notice of Affordability Restrictions on Transfer of Property (the "Notice") and the Restrictions, the terms of the Restrictions shall prevail.

A Memorandum of Disposition Agreement and the Regulatory Agreement have been recorded concurrently herewith, and shall remain in effect from the date of recordation of this Notice until the expiration of the Term of the Restrictions.

This Notice is being recorded and filed by the City, in compliance with Health and Safety Code Sections 33334.3(f)(3) and (4) and Section 33413(c)(5), and shall be indexed against the County and the Owner.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, the parties have entered into this Notice of Affordability Restrictions on Transfer of Property on or as of _____, 20__.

AFFORDABLE DEVELOPER:

[SAHA Entity Name] , L.P.,
a California limited partnership

By: [SAHA Entity Name] ,
a California [Entity Type] ,
its general partner

By: Satellite Affordable Housing
Associates, a California nonprofit
public benefit corporation, its
manager

By: _____
Susan Friedland
Chief Executive Officer

[ALL SIGNATURES MUST BE NOTARIZED]

CITY:

CITY OF ALBANY, a charter City

By: _____
Nicole Almaguer, City Manager

Date: _____

[ALL SIGNATURES MUST BE NOTARIZED]

APPROVED AS TO LEGAL FORM:

By: _____
Rafael Yaquian, Special Counsel

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, _____, 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.

Name: _____
Name: Notary Public

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, _____, 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.

Name: _____
Name: Notary Public

EXHIBIT A

LEGAL DESCRIPTION

Real property in the County of Alameda, State of California, described as follows:

Free Recording Requested Pursuant to
Government Code Sections 27383 and 27388.1

RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:

[City of Albany](#)
[1000 San Pablo Avenue](#)
[Albany, California 94706](#)
[Attn: City Manager](#)

Space Above This Line for Recorder's Use

DECLARATION OF SEWER EASEMENT

THIS DECLARATION OF SEWER EASEMENT ("Declaration") is made as of _____, 20___, by The City of Albany (the "City").

The City is the fee owner of the real property located at 755 Cleveland Avenue, Albany, California, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

The City hereby establishes, for the benefit of the City, an irrevocable, non-exclusive easement for sewer purposes under and through that part of the Property more particularly described in Exhibit B attached hereto and incorporated herein by this reference (the "Easement").

This Declaration is to be considered as a covenant and equitable servitude running with the Property. The Easement shall attach to and run with the Property, and shall be limitations upon all current and future owners and lessees, and their respective successors, assigns and tenants, and shall be appurtenant to the dominant estate and burden the servient estate.

[Signature Page Follows]

IN WITNESS WHEREOF, the City has executed this Declaration as of the date first written above.

CITY:

~~THE~~ CITY OF ALBANY, a California charter City

By: _____
Nicole Almaguer, City Manager

APPROVED AS TO LEGAL FORM:

By: _____
Craig Labadie, City Attorney

Signatures Must Be Notarized

Exhibit A
Legal Description of the Property

The land is situated in the County of Alameda, State of California, and is described as follows:

Exhibit B

Legal Description of the Easement [Area](#)

The land is situated in the County of Alameda, State of California, and is described as follows:

Free Recording Requested Pursuant to
Government Code Sections 27383 and 27388.1

RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:

[City of Albany](#)
[1000 San Pablo Avenue](#)
[Albany, California 94706](#)
[Attn: City Manager](#)

Space Above This Line for Recorder's Use

DECLARATION OF WATER EASEMENT

THIS DECLARATION OF WATER EASEMENT ("Declaration") is made as of _____, 20____, by ~~The~~[the](#) City of Albany (the "City").

The City is the fee owner of the real property located at 755 Cleveland Avenue, Albany, California, and more particularly described in [Exhibit A](#) attached hereto and incorporated herein by this reference (the "Property").

The City hereby establishes, for the benefit of the City, an irrevocable, non-exclusive easement for domestic water pipeline purposes under and through that part of the Property more particularly described in [Exhibit B](#), attached hereto and incorporated herein by this reference (the "Easement").

[This Declaration is to be considered as a covenant and equitable servitude running with the Property.](#) The Easement shall attach to and run with the Property, and shall be limitations upon all current and future owners and lessees, and their respective successors, assigns and tenants, and shall be appurtenant to the dominant estate and burden the servient estate.

[\[Signature Page Follows\]](#)

IN WITNESS WHEREOF, the City has executed this Declaration as of the date first written above.

CITY:

~~THE~~ CITY OF ALBANY, a California charter City

By: _____

Nicole Almaguer, City Manager

APPROVED AS TO LEGAL FORM:

By: _____

Craig Labadie, City Attorney

Signatures Must Be Notarized

Exhibit A
Legal Description of the Property

The land is situated in the County of Alameda, State of California, and is described as follows:

Exhibit B
Legal Description of the Easement Area

The land is situated in the County of Alameda, State of California, and is described as follows:

SUMMARY REPORT

City of Albany
Cleveland Avenue
Family Housing Property
Reuse Appraisal

Prepared by:
Seifel Consulting Inc.

October 2020

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A. Introduction

The City of Albany (City) purchased a property from the California Department of Transportation in 2011, and the City is currently negotiating with a non-profit developer, Satellite Affordable Housing Associates, to develop affordable housing on a portion of it. As the property was acquired by the City, a copy of the proposed sale or lease agreement and a summary report that describes specific financing elements of the proposed transaction must be available for public inspection prior to the public hearing.

This Summary Report has been prepared in accordance with California Health and Safety Code Section 33433 (Section 33433) and contains the following information where it is relevant to the proposed transaction:

- The cost of the agreement to the City, including land acquisition costs.
- The estimated value of the interest to be conveyed or leased, determined at the highest and best use permitted under the plan.
- The estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants, and development costs required by the sale or lease.
- An explanation regarding why the sale or lease of the property will assist in the elimination of blight.
- The purchase price or sum of the lease payments that the lessor will be required to make during the term of the lease.
- If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use consistent with the redevelopment plan, then the City shall provide as part of the summary an explanation of the reasons for the difference.

This report outlines the relevant parts of the proposed Land Disposition, Development and Funding Agreement (Disposition Agreement) between the City and the Developer (Satellite Affordable Housing Associates or SAHA). The Disposition Agreement requires the Developer to redevelop this Property for affordable housing. The purpose of this report is to provide the necessary information required in Section 33433. This report is based upon information in the proposed Disposition Agreement and is organized into the following sections:

- A. Introduction** – This section outlines the structure of the report and provides pertinent definitions.
- B. Project Description** – This section describes the Property, the Developer, the proposed project, compliance with the Surplus Land Act, and provides further background on the analysis.
- C. Summary of the Proposed Agreements** – This section outlines the major provisions of the Disposition Agreement, including the City's and the Developer's responsibilities.
- D. Cost of Agreements to the City** – This section describes the historical expenditures of the City, potential revenues from the ground lease of the properties and the value of the tax increment generated by the Disposition Agreement.
- E. Highest and Best Use Value** – This section presents the value of the property at its highest and best use, as determined by an independent appraisal.
- F. Reuse Value** – This section estimates the value of the Property to be conveyed, determined at the use and with the conditions, covenants, and development costs required for the sale and development of the Property under the Agreements (referred to as the "reuse value" of the Property).
- G. Justification for City Loan and Financing Assistance** – This section explains why the City Loan is needed and the value to the City of the regulatory restrictions for affordable housing.
- H. Blight Alleviation** – This section explains why the sale and redevelopment of the Property pursuant to the Agreements will assist in the elimination of blight.
- I. Conclusion** – The report concludes with a final summary of findings.

B. Project Description

The City of Albany purchased a vacant property from the California Department of Transportation (Caltrans) that is located adjacent to the Highway 80 interchange in 2011. The City is negotiating with the Developer to develop affordable housing on a portion of this site in accordance with the proposed Disposition Agreement. This section provides an overview of the site, the Developer, the proposed Development of affordable housing, and provides further background on the analysis.

1. Property Description

In 2011, the City entered into an agreement with Caltrans to purchase approximately 4.5 acres of vacant land located between Cleveland Avenue and Pierce Street. The property was purchased by the City through an enforceable obligation between the City and Caltrans to facilitate the revitalization efforts of the former Redevelopment Agency of the City of Albany (Former RDA) using Former RDA tax increment proceeds. The property was not part of the Former RDA's property assets at the time of redevelopment dissolution and was not included in either the Long Range Property Management Plan or the Housing Asset Transfer List.

A portion of this former Caltrans property, located at 755 Cleveland Avenue, is being proposed to be developed as affordable housing for families.¹ This 1.13 acre portion of the former Caltrans land is hereafter referred to in this report as either the Property or Cleveland Avenue Family Housing Property.

The Property is located in the Pierce Street neighborhood adjacent to the new Peggy Thomsen Pierce Street Park, which will eventually be connected with a bike path to Cleveland Avenue. The Property is adjacent to an existing 4-story apartment building on Calhoun Street and a single-family home facing Washington Avenue.

2. Developer

The Developer, Satellite Affordable Housing Associates (SAHA), submitted a proposal to the City in 2017 to develop the Property as affordable housing. SAHA has over 50 years of experience in developing and managing affordable housing throughout the Bay Area. SAHA specializes in creating residential and mixed-use developments for very low-income families, seniors, and people with special needs. SAHA will form a limited partnership in which an affiliate of SAHA will remain as the general partner.

As indicated in the Disposition Agreement, the City has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in the Disposition Agreement and will materially contribute to the implementation of the City's vision to create a vibrant economy and sustainable system through the timely construction of the Development as affordable housing.

3. Proposed Development

SAHA is proposing to develop 62 units (including one manager's unit) of affordable family housing that will complement the East Shore/Solano Hill neighborhood, help activate Pierce Street park, allow a future bike path connection, and meet the City's sustainability goals and principles. The proposed Development will include a residential building that is cut into the sloped site to minimize the massing of the building and will allow for a partially below grade parking podium.

Three residential units, the apartment's main lobby and its management office will face Cleveland Avenue. The building will also activate Washington Avenue with apartments at the courtyard level, new

¹ The Property is located at the northeast corner of Washington Ave and Cleveland Ave and is also considered to be a portion of the property with the address of 701 Washington Avenue, Albany, CA 94706.

trees and landscaping, as well as a second residential entrance. The building will include a landscaped courtyard on the podium to serve the residents, which will be screened from the adjacent properties. The improved sidewalks and landscaping will enhance pedestrian and bicycle connections along the property and to the surrounding area.

SAHA is proposing to secure a broad range of private and public funding sources to build the Development as affordable housing, including Federal Low Income Housing Tax Credits that will require all of the units to be affordable to lower income households with incomes at or below 80% of areawide median income. Furthermore, the City will restrict 30 units to be occupied by extremely low, very low and low income households in compliance with the City’s Inclusionary Housing Ordinance and State Density Bonus Law through the terms of the Disposition Agreement and a regulatory agreement. The anticipated mix of units by affordability level is shown below in Table 1.

**Table 1
City Restricted Units
Cleveland Avenue Family Housing Property**

Unit Type	Number of Units ^a
20% of AMI	
Studio	2
<u>One-Bedroom</u>	<u>4</u>
Subtotal	6
50% of AMI	
One-Bedroom	1
Two-Bedroom	2
<u>Three-Bedroom</u>	<u>2</u>
Subtotal	5
60% of AMI	
One-Bedroom	6
Two-Bedroom	7
<u>Three-Bedroom</u>	<u>6</u>
Subtotal	19
Total City Restricted Units	30

a. The unit mix is based on the best available information but may differ from the actual development mix.

Source: City of Albany, Satellite Affordable Housing Associates.

4. Compliance With Surplus Lands Act

Under Government Code Section 54234, if a local agency entered into an exclusive negotiating agreement or legally binding agreement to dispose of property on or before September 30, 2019, the revisions to the Surplus Lands Act, adopted under Assembly Bill 1486, do not apply to the transfer of the property so long as the property is disposed of prior to December 31, 2022. The provisions of the Surplus Lands Act that existed on December 31, 2019, continue to apply.

Under the 2019 Surplus Land Act, property held by a public agency for exchange is exempt from the Surplus Lands Act noticing requirements. The City acquired the property with the intent to transfer the property to facilitate the revitalization efforts of the Former RDA. Government Code Section 52201 authorizes the City to sell or lease property to which it holds title which it held for exchange for the purpose of creating economic opportunity.

Under Government Code Section 52200.2(c), the creation of affordable housing to meet demonstrated affordable housing needs identified in the housing element of a city's general plan constitutes an economic opportunity. The City can therefore transfer the Property as contemplated in the Disposition Agreement without violating the Surplus Lands Act noticing requirements.

C. Summary of the Proposed Land Disposition, Development and Funding Agreement

The proposed Disposition Agreement requires the Developer (SAHA) to develop affordable housing on the Property. This section describes key definitions and provisions of the proposed Disposition Agreement that are relevant to the proposed Development and the value of the Property, as well as other legal agreements that are exhibits to the Disposition Agreement (collectively referred to as Agreements). It concludes with a summary description of the responsibilities of the City and Developer that are relevant to the implementation of the proposed Development and the Property value.

Land Use Entitlements and Environmental Review – The City approved the land use entitlement application for the Development in December 2019 pursuant to Government Code Section 65913.4, and the Development is therefore exempt from review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(1), which states the general rule that CEQA does not apply to ministerial projects.

Capitalized Ground Lease– The Property is being conveyed to the Developer in the form of a long-term, 99-year ground lease that carries a capitalized land rent of \$4.65 million based on the market value of the property. The Disposition Agreement calls for the capitalized land rent to be treated as a residual receipt loan as part of the City Loan with a 55 year term bearing simple interest at a rate of 0% per annum. The Capitalized Ground Lease will be an attachment to the Disposition Agreement.

Regulatory Agreement –The Regulatory Agreement and Declaration of Restrictive Covenants will be recorded against the Developer's leasehold interest in the property upon execution of the Capitalized Ground Lease and will restrict the Development and use of the property as affordable housing. The Regulatory Agreement will detail income restrictions for each type of unit. The proposed Disposition Agreement specifies that 30 of the units will be set at a rent level affordable to households earning 80% or less of Alameda County median income as described in Section B. The precise distribution and mix of units by income level will be determined prior to execution of the Capitalized Ground Lease based on final project financing and development costs.

City Loan and Financial Assistance –To facilitate affordable housing on the site and associated public improvements, the City is proposing to provide the Developer with a City Loan to fund capitalized lease payments for the Capitalized Ground Lease and to help pay for a portion of the fees for the Development. The Disposition Agreement calls for the City Loan to be treated as a residual receipt loan with a 55 year term bearing simple interest at a rate of 0% per annum. The Developer will not use the City Loan funds for any other purpose without the prior written consent of the City. The amount of the City Loan is intended to be equal to the amount of the City's financial contribution necessary to make the construction and operation of the Development financially feasible and to satisfy all of the covenants in the Disposition Agreement and the Regulatory Agreement. The City Loan and related financial assistance are further described below.

In summary, the City and the Developer are entering into the Disposition Agreement to accomplish the Development, which includes the provision of 62 units of affordable housing that will be restricted to occupancy by low income households pursuant to the Disposition Agreement and related agreements. To accomplish the Development, the City and Developer will assume the following major responsibilities. (Please refer to the actual agreements themselves for the full set of responsibilities and obligations.)

1. City Responsibilities

The City would have the following key responsibilities according to the Disposition Agreement:

- Clear the Caltrans Abutter's Rights restrictions from the title of the property.
- Rezone the property to allow the proposed project.
- Approve a parcel map creating a parcel sized to accommodate the proposed project.
- Authorize the City of Albany's base allocation portion of the Alameda County Measure A1 affordable housing fund to the project.
- Provide necessary permits and approvals to facilitate development of the Property.
- Provide a long-term Capitalized Ground Lease of the Property to the Developer for a term of 99 years, which will be repaid out of residual receipts from the Development via the City Loan Agreement.
- Provide a loan to fund many of the City-imposed planning application, building permit, and plan check fees for the Development, which will be part of the City Loan Agreement.
- Pay the City costs necessary to administer and carry out its respective responsibilities and obligations under the Disposition Agreement.

2. Developer Responsibilities

The Developer would have the following key responsibilities according to the Disposition Agreement:

- Prepare a planning application for City approval.
- Prepare construction documents suitable for issuance of a building permit.
- Undertake all geotechnical, air quality, noise, and other due diligence investigations of the property to ensure the property is suitable residential use.
- Prepare grant and loan applications for project financing.
- Obtain necessary permits and approvals for the development of the Property and submit a certification from the Developer's architect that the plans, specifications and design documents meet the terms of the Disposition Agreement.
- Enter into a long-term lease for the Property in an "as is" condition, consistent with the terms in the Disposition Agreement and Capitalized Ground Lease.
- Assure that the Development will only be used for residential use as affordable housing consistent with the Capitalized Ground Lease and the Regulatory Agreement
- Obtain binding commitments for loans and funding sufficient to complete the project.
- Manage all aspects of the Development, pay the costs of developing the site and constructing all improvements (except for work set forth in the Disposition Agreement to be performed or paid for by the City or others) and implement the Developer's responsibilities and obligations under the Disposition Agreement.
- File all required federal and other material tax returns and reports in a timely manner, and pay all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon it or its income or its interest in the Property in a timely manner, except those which are being contested in good faith.
- Will not transfer, convey, assign or lease the site or buildings or improvements without prior approval of the City.

D. Cost of Agreements to the City

This section describes the projected City expenditures and revenues pursuant to the Agreements with the Developer. The cost of these Agreements to the City is defined as the net cost to the City, which is the difference between estimated City costs and revenues.

Given the nature of the proposed Development and the Agreements, future costs and revenues cannot be accurately predicted. Therefore, the projections presented in this report should be considered to be the best estimates currently available based upon analysis of information provided by the City, Developer and consultants as of September 2020. Actual costs and revenues to the City may vary from these projections.

1. Estimated City Cost

The City has incurred and will continue to incur costs related to the acquisition and development of the Property, which consist of two major components:

- **Property Related Costs** – This cost includes expenditures by the City for the acquisition of the properties as well as property related costs specified in the Disposition Agreement.
- **City Fee Contribution** – This is the cost to the City of providing a City Loan to help fund a portion of the fees associated with the Development as identified in the Disposition Agreement.

a. Property Related Costs

As described earlier, the City purchased approximately 4.5 acres of land from Caltrans based on an Agreement of Purchase and Sale of Real Estate.² According to this Agreement, the City paid \$1,950,000 to purchase this land including associated closing costs.

The Property consists of the 1.13-acre portion of this land that is being proposed to be developed as affordable housing at the corner of Cleveland and Washington. Based on the proportion of land area in acreage, the allocated share of the purchase price for the Property was \$490,000.

As further described below in Section E, the property has significantly appreciated in value since the property was purchased in 2011. A recent appraisal indicates that the property value is \$4,650,000 based on its highest and best use as a 62 unit multifamily development.

According to the LLDA, the Developer will be responsible for paying any other costs related to the property, such as the cost of title insurance, document preparation, recordation fees, transfer tax, if any, and any additional recording costs to close the Escrow for the leasehold of the Property, as well as all ad valorem taxes for the Property. The City has no obligation (\$0) for these costs.

b. City Financial Assistance

The City will also provide approximately \$406,100 in additional financial assistance to help the Developer meet its permit and building fee obligations (referred to as the City Fee Contribution), which will be in the form of a City Loan payable out of residual receipts from the Development.

² The Agreement of Purchase and Sale of Real Estate was dated November 15, 2010, and the sale was executed in January 2011 according to the City Council records from its meeting on January 17, 2011. According to the meeting records, the City completed a Phase 1 and Phase 2 Environmental Assessment (Ninyo and Moore) of the parcel. The findings of the Assessment included a recommendation for a Soils Management Plan during construction but did not find significant contamination that would preclude development of the parcel.

c. Total Cost to City

The total cost to the City including all of these cost components is projected to be \$5,056,100, as itemized below in Table 2.

**Table 2
Total Cost to City
Cleveland Avenue Family Housing Property**

Cost Items	Estimated Cost
Property Related Costs and City Financial Assistance	
Capitalized Lease Payment	\$4,650,000
<u>City Fee Contribution</u>	<u>\$406,100</u>
Total Costs to City	\$5,056,100

Source: City of Albany, Satellite Affordable Housing Associates.

2. Estimated City Revenue

Given the Development’s restricted use as affordable housing, it is not anticipated to generate significant revenue to the City. The City will only receive revenues after all of the Development obligations are met, and it will only receive a portion of the residual receipts from the Development because a significant share of the remaining cash flow will be distributed to other public lenders and the Developer.

The City also does not expect to receive any property tax or tax increment revenues from the Property because the Developer (as a non-profit corporation) is anticipated to file for and receive a welfare property tax exemption on the property given its restricted use as affordable housing for lower income households.

The estimated revenue to the proposed Development is currently projected to be \$0 in 2020 dollars.

3. Net Cost to City

The estimated net cost to the City is the difference between projected revenues and costs, as shown below in Table 3. The net cost to the City is estimated to be about \$5,056,100.

**Table 3
Net Cost to City
Cleveland Avenue Family Housing Property**

Net Cost to City	Estimated Net Costs
Total Cost to City	\$5,056,100
<u>Less: Total Revenue to City</u>	<u>\$0</u>
Net Cost to City	\$5,056,100

Source: City of Albany, Satellite Affordable Housing Associates.

E. Estimated Value at Highest and Best Use

As described earlier, the Property was acquired by and is owned by the City. The highest and best use for the Property is multifamily residential at R-3 (High Density Residential) according to the City's General Plan and its Zoning Ordinance. This land use and zoning designation permits the development of apartments. According to the City, the Property was approved December 20, 2019 for development of 62 multifamily apartments, which is considered to be its highest and best use.

SAHA commissioned Thomas E. Dum Real Estate Appraisers, Inc. to appraise the property at its highest and best use. Their analysis and valuation conclusion is documented in their Appraisal Report dated January 29, 2020, which is available from the City upon request. The Appraisal Report indicates that the property value is \$4,650,000 based on its potential development as 62 multifamily units.

F. Estimated Fair Reuse Value

The reuse value is the value of the Property given the allowable development program and the reuse restrictions associated with the properties given the conditions, covenants, and development obligations that are required in the Disposition Agreement and associated Agreements regarding the lease and development of the Property as affordable housing.

The reuse value of the Property is estimated in this report utilizing a residual land value analysis that assumes the proposed development program and the reuse restrictions that are contained in the draft Disposition Agreement and related Agreements as of September 2020. The residual land value analysis takes into account all of the costs associated with the proposed Development for the Property and compares these costs with the potential revenues from the Development given the reuse restriction as affordable housing.

Given its planned development as affordable housing, revenues from the Property will be significantly restricted, and future revenues will not be sufficient to support the projected development costs without substantial public assistance from the City and other public entities. Thus, the residual land value analysis in this report incorporates all of the public and private sources that will provide funding for the Development and considers these sources as development revenues, which are then compared with the anticipated development costs as further described below.

1. Estimated Development Revenues (Sources)

The City and the Developer have been working collaboratively to assemble public and private funding sources that will be sufficient to fully fund the development costs for the Property. The Developer's proposed funding plan achieves this goal, but the proposed Development is not financially feasible without substantial public subsidies as there is a significant gap between the amount of supportable private debt that future project revenues can support the cost of Development.

The Developer provided financial projections of revenue and expenses for the Property that were used as the basis for the reuse appraisal. The proposed Development consists of 62 affordable apartments that will be rented to lower income households at an average household income of about 47 percent of the Alameda County Areawide Median Income (AMI). The typical household size of future residents is proposed to be similar to the City's typical household size of about 3 persons per household, which means that a typical household will have an income of about \$50,000 based on 2020 Alameda County AMI data.

Rents will be restricted to thirty percent (%) of income, and the average rent of the Development will be about \$1,280 per month.³ As shown below in Table 4, the Property is projected to generate about \$934,000 per year in effective gross income from the apartments after taking into other income and a vacancy allowance. After deducting operating expenses, net operating income will leverage about \$3.9 million in supportable debt as a Permanent Loan.

Appendix Table A-2 at the end of this report shows the projected Permanent Loan as well as the estimated revenues (sources) for the property, as further described below.

Table 4
Estimated Revenues and Supportable Debt
Cleveland Avenue Family Housing Property

	Total	Per Unit
Rental Income		
Residential Rent	\$934,100	\$15,100
Other Income	\$11,200	\$200
<u>Less: Vacancy</u>	<u>(\$47,300)</u>	<u>(\$800)</u>
Effective Gross Income (EGI)	\$898,000	\$14,500
<u>Less: Operating Expense</u>	<u>(\$588,400)</u>	<u>(\$9,500)</u>
Net Operating Income	\$309,600	\$5,000
Less: Bond Monitoring Fee	(\$4,000)	(\$100)
Less: Loan Compliance	(\$3,900)	(\$100)
<u>Less: HCD TOD Mandatory Interest Payment</u>	<u>(\$33,800)</u>	<u>(\$500)</u>
Adjusted Net Available Income	\$267,900	\$4,300
Supportable Debt	\$3,914,900	\$63,100

Source: Satellite Affordable Housing Associates.

a. Development Revenues (Sources)

The Developer has submitted a funding plan for the development of the Property that has been reviewed by City staff and used by Seifel Consulting to prepare this reuse appraisal. Given the restricted use of the Property as affordable housing, revenue from the apartments will not be sufficient to support the cost of their development, and numerous public sources will be required to provide financial assistance to the Development. Each of the key revenue sources is described below, and Appendix Table A-1 summarizes the estimated revenues that are associated with each of them:

- **Permanent Loan**– As indicated above, the net operating income (NOI) from the Property given its restricted rental income is anticipated to support about \$3.9 million in permanent debt. This Permanent Loan amount is calculated based on an interest rate of about 4.1 %, a 30-year amortization period and a debt coverage ratio of 1.18 (adjusted net available income to debt service).
- **Tax Credit Equity (Limited Partner Equity Investment)**– The Developer anticipates raising about \$28 million in private equity investment from an investor limited partner in exchange for Federal and State Low Income Housing Tax Credits. This amount of equity investment is dependent on the receipt of an allocation of tax credits from the State of California and many market factors.

³ The affordable rent is based on affordable rents established by the California Tax Credit Allocation Committee at specific restricted income levels and is calculated net of tenant-paid utilities, which are estimated to average about \$80 per month.

- **City Financial Assistance**– The City will also provide about \$406,100 in additional financial assistance through a City Loan that will cover of the City’s planning, building and permit fees as described above.
- **County of Alameda Funding Assistance**– The Developer has received a commitment from the County of Alameda of about \$2.7 million in HOME funds and \$2.3 million in Measure A1 funds.
- **Transit Oriented Development Program (TOD)**– The California TOD program is anticipated to provide a low-interest, permanent loan of about \$8.1 million with a deferred, long-term payment obligation and minimum annual payments.
- **Affordable Housing Program (AHP)**– The Federal Home Loan Bank (FHLB) Affordable Housing Program is anticipated to provide \$610,000 in funding, which will be structured as a deferred loan that will be forgivable on a pro-rata basis until about five years after closing.
- **Developer Fee**– To help meet the development’s funding gap, the Developer is also proposing to defer about \$1.0 million of their developer fee.

In summary, the Permanent Loan is only able to support about 8% of the anticipated development costs. The City, County and State are anticipated to provide about \$13.3 million in soft loan funding to subsidize the Development. In addition, Federal and State Low Income Housing Tax Credits are proposed to leverage about \$28 million in private equity from tax credit investors to help pay for residential development costs, and the AHP program is proposed to contribute \$610,000.

Without this substantial commitment of funding resources for the provision of affordable housing from the City, County, State, as well as Federal and State tax credits that leverage private equity, the Development would not be financially feasible as these sources represent about \$42.3 million in funding. Table 5 below summarizes the estimated revenues for each major funding category.

2. Estimated Development Costs (Uses)

The Developer has been conducting due diligence on the property and has prepared recent estimates of the development costs associated with the Property given their planned development as affordable housing. Each of the key cost factors is described below, and Appendix Table A-2 shows the estimated costs for each of these categories that are associated with the property and the (excluding the land cost):

- **Property Related Costs**– Property related costs consist of offsite and onsite improvements.
- **Hard Construction Costs**– Hard construction costs include building construction costs as well as general contractor costs and contingency.
- **Project Related Soft Costs**– Project related soft costs include professional fees, such as architecture, engineering and legal, government fees and building permit costs, operating and service reserves, marketing costs and other project costs and soft cost contingency.
- **Project Financing**– Project financing costs include costs related to construction and bond financing, as well, as fees and costs that are required to secure debt commitments.
- **Developer Costs**– The developer fee and overhead costs are the amount that is allowed according to the California Tax Credit Allocation Committee based on the project costs. As described above, a significant portion of the developer fee will be deferred to help fund the Development.

The total development cost of the proposed Development is approximately \$47.2 million, as summarized below in Table 5.

3. Residual Land Value (Reuse Value)

As described earlier, the reuse value is the value of the Property given the proposed development program and the reuse restrictions associated with its development as affordable housing. The reuse value is calculated based on the residual land value, which is the difference between the estimated development revenues and costs.

As indicated in Table 5 below, the total estimated revenues (sources) from development of the Property and the total estimated development costs (uses) are each approximately \$47.2 million, as the Developer is seeking funding sources to offset the financial gap that occurs given the significant difference between the amount of supportable debt that the apartments can generate and the property's development cost. The residual land value is the difference between these projected revenues and costs, and thus, the residual land value and reuse value is \$0.

Without the approximately \$42.3 million in funding resources that will be provided by public agencies and private partners to support the provision of affordable housing, the Development would have a significant funding gap, and the reuse value would be negative.

Table 5
Reuse Value Based on Residual Land Value Analysis
Cleveland Avenue Family Housing Property

Development Revenues and Costs	Project Estimates
Estimated Development Revenues Excluding Land	
Permanent Loans	\$3,914,900
Tax Credit Equity	\$28,013,700
City Fee Contribution	\$406,100
Other Public Funding Assistance	\$13,881,100
<u>Deferred Developer Fee</u>	<u>\$1,000,000</u>
Subtotal - Development Revenues	\$47,215,800
Estimated Development Costs Excluding Land	
Property Related Costs (Except Land)	\$1,819,400
Hard Construction Costs	\$34,825,600
Project Related Soft Costs	\$4,795,600
Project Financing	\$2,624,300
<u>Developer Costs</u>	<u>\$3,150,900</u>
Subtotal - Development Costs	\$47,215,800
Residual Land Value (Fair Reuse Value)	\$0

Source: City of Albany, Satellite Affordable Housing Associates.

G. Justification for the City Loan and Financial Assistance

As described previously, the City will be restricting the affordability of 30 units to be occupied by extremely low, very low and low income households in compliance with the City’s Inclusionary Housing Ordinance and State Density Bonus Law, as well as the terms of the Disposition Agreement and the City Regulatory Agreement. The provision of affordable housing will help the City meet its housing obligations in the City’s Housing Element and its Regional Housing Needs Allocation, as well as provide an important affordable housing resource for lower income households.

Utilizing 2020 Alameda County AMI data, Seifel analyzed the difference between the restricted value for these 30 units given the affordability restrictions and the development cost of the restricted units, which is referred to as the affordability gap. As shown in Table 6, the affordability gap is \$18.5 million, which is well in excess of the City Loan amount of about \$5.1 million. (Please refer to Appendix Table A-4 for supporting calculations.)

In summary, the City Loan and Financial Assistance will provide the City with an important affordable housing resource for lower income households, help the City meet its housing obligations and will provide an economic benefit to the City and its residents that is well in excess of the City Loan amount and other Financial Assistance provided for the development of the Project.

**Table 6
City Restricted Units– Affordability Gap
Cleveland Avenue Family Housing Property**

	Total	Per Restricted Unit
Affordability Gap of Restricted Units		
Average Value of City Restricted Units	\$4,295,100	\$143,200
<u>Less: Development Cost of City Restricted Units</u>	<u>(\$22,845,000)</u>	<u>(\$761,500)</u>
Affordability Gap	(\$18,549,900)	(\$618,300)
Property Related Costs and City Financial Assistance		
Capitalized Lease Payment	\$4,650,000	\$155,000
<u>City Fee Contribution</u>	<u>\$406,100</u>	<u>\$13,500</u>
Total Costs to City	\$5,056,100	\$168,500

H. Blight Elimination

According to the City and its former Redevelopment Agency, the property has suffered from blighting conditions, and these conditions will be alleviated with the proposed Development:

- The redevelopment of the property will eliminate the current physical blighting conditions on the site and help create a higher quality environment for the surrounding neighborhood.
- The redevelopment of the property will also result in the remediation of hazardous materials, provide a future bike path connection, enhance Pierce Street park, and meet other environmental goals.
- The proposed Development will provide much needed affordable housing, which will serve households that may be currently experiencing residential overcrowding.

I. Conclusion

The proposed Development of the Property will help meet the City's housing goals and its former Redevelopment Agency's revitalization goals. The Property will be retained by the City and leased to the Developer in order to provide 62 units of much-needed affordable housing. The reuse analysis in this report finds that the reuse value of the property is \$0.

Given the restricted revenues from rental of the affordable apartments, project revenues could only support a permanent mortgage of about \$3.9 million, which represents 8% of development costs. Without the approximately \$42.3 million in funding resources that will be provided by public agencies and tax credit investors to support the provision of affordable housing, the Development would have a significant funding gap, and the reuse value would be negative. The City's contributions to the project are not more than is necessary to make the Development financially feasible.

1. Limitations to this Analysis

The information presented in this report and the financial estimates used to support the reuse appraisal were prepared based on relevant development, financial, appraisal and real estate data collected from the City and Developer from March to September 2020. While Seifel has made reasonable efforts to verify the accuracy of the figures, information and analysis presented in this report and presumes that the information received from the City and Developer can be relied upon as being accurate and timely, Seifel makes no warranty or guarantee as to the accuracy of this information or to the projections that are based on this information.

Although Seifel has prepared the analysis in this report based on reasonable assumptions and information, projections of current and future revenues may be lower or higher than what is shown in this report and may not reflect actual future revenues received or costs incurred by the City, Developer or any other entity. The tables and analysis in this report have been prepared for the sole purpose of providing background information and analysis to assist the City and other public agencies in understanding the financial characteristics of the proposed Development.

Appendix Tables

**Appendix Table A-1
City Restricted Units
Cleveland Avenue Family Housing Property**

Unit Type	Number of Units^a	Gross Monthly Rent	Utility Allowance	Tenant Monthly Rent	Annual Rental Income
20% of AMI					
Studio	2	\$457	\$47	\$410	\$9,840
<u>One-Bedroom</u>	4	\$489	\$57	\$431	<u>\$20,688</u>
Subtotal	6				\$30,528
50% of AMI					
One-Bedroom	1	\$1,223	\$57	\$1,165	\$13,980
Two-Bedroom	2	\$1,468	\$81	\$1,387	\$33,288
<u>Three-Bedroom</u>	<u>2</u>	\$1,696	\$105	\$1,591	<u>\$38,184</u>
Subtotal	5				\$85,452
60% of AMI					
One-Bedroom	6	\$1,468	\$57	\$1,410	\$101,520
Two-Bedroom	7	\$1,762	\$81	\$1,681	\$141,204
<u>Three-Bedroom</u>	<u>6</u>	\$2,035	\$105	\$1,931	<u>\$139,032</u>
Subtotal	19				\$381,756
Total	30				\$497,736

a. The unit mix is based on the best available information but may differ from the actual development mix.

Source: City of Albany, Satellite Affordable Housing Associates.

Appendix Table A-2
Estimated Development Revenues Excluding Land
Cleveland Avenue Family Housing Property

Development Revenues (Sources)	Project Estimates	
	Total	Per Unit
Permanent Loans	\$3,914,900	\$63,100
Tax Credit Equity		
Federal	\$15,992,400	\$257,900
<u>State</u>	<u>\$12,021,300</u>	<u>\$193,900</u>
Subtotal	\$28,013,700	\$451,800
City Loan^a		
City Fee Contribution	\$406,100	\$6,600
Other Public Funding Assistance		\$0
Alameda County HOME	\$2,698,900	\$43,500
Alameda County A1 Bonds	\$2,330,000	\$37,600
HCD TOD Program	\$8,054,900	\$129,900
FHLB Affordable Housing Program (AHP)	\$610,000	\$9,800
<u>Accrued Interest - Public Loans</u>	<u>\$187,300</u>	<u>\$3,000</u>
Subtotal	\$13,881,100	\$223,900
Deferred Developer Fee	\$1,000,000	\$16,100
Total	\$47,215,800	\$761,500

a. Excludes the capitalized lease payment attributable to land.

Appendix Table A-3
Estimated Development Costs Excluding Land
Cleveland Avenue Family Housing Property

Development Cost (Uses)	Project Estimates	
	Total	Per Unit
Property Related Costs (Except Land)		
Offsite Improvements	\$61,900	\$1,000
Site Work	\$1,757,500	\$28,300
<u>Demolition and Land Remediation</u>	<u>\$0</u>	<u>\$0</u>
Subtotal	\$1,819,400	\$29,300
Hard Construction Costs		
Unit Construction	\$29,831,500	\$481,200
<u>General Contractor Costs and Contingency</u>	<u>\$4,994,200</u>	<u>\$80,600</u>
Subtotal	\$34,825,600	\$561,700
Project Related Soft Costs		
Professional Fees (Architecture & Engineering)	\$1,580,900	\$25,500
Legal Fees	\$112,500	\$1,800
Government Fees	\$1,100,000	\$17,700
City Fee Contribution	\$406,100	\$6,600
Operating and Service Reserves	\$428,600	\$6,900
Marketing-Advertising	\$75,000	\$1,200
Other Project Costs	\$548,300	\$8,800
Syndication Costs	\$144,800	\$2,300
<u>Soft Cost Contingency</u>	<u>\$399,400</u>	<u>\$6,400</u>
Subtotal	\$4,795,600	\$77,300
Project Financing		
Construction Interest & Fees	\$2,307,500	\$37,200
Permanent Financing	\$66,600	\$1,100
<u>Bond Financing Costs</u>	<u>\$250,200</u>	<u>\$4,000</u>
Subtotal	\$2,624,300	\$42,300
Developer Costs		
Developer Fee Payable at Permanent Closing	\$3,000,000	\$48,400
<u>Construction Management and Other Consultatns</u>	<u>\$150,900</u>	<u>\$2,400</u>
Subtotal	\$3,150,900	\$50,800
Total Development Cost	\$47,215,800	\$761,500

Source: City of Albany, Satellite Affordable Housing Associates.

Appendix Table A-4
Estimated Value of City Restricted Units
Cleveland Avenue Family Housing Property

Income		
Rent		\$497,736
Section 8 Rental Subsidy		\$0
<u>Laundry & Vending Income</u>		<u>\$5,400</u>
Potential Gross Income		\$503,136
<u>Less: Vacancy</u>	5.0%	<u>(\$25,157)</u>
Effective Gross Income		\$477,979
Expenses		
Operating Expenses		\$232,830
Replacement Reserve Deposits		\$18,000
<u>Resident Services</u>		<u>\$33,871</u>
Total Expenses		\$284,701
Net Operating Income		\$193,278
Average Value of City Restricted Units	4.50%	\$4,295,100

Key Dates Timeline for SAHA Albany Family Housing Project

- **February 5, 2018**- Closed Session with City Council
- **June 18, 2018**-Closed Session with City Council/ SAHA presents a background report to the City Council in the public meeting
- **September 18, 2018**- City Council adopts Resolution 2018-113 authorizing the execution of the Exclusive Negotiating Agreement (ENA) for the Albany Family Housing Project
- **February 4, 2019**- Closed Session with City Council
- **March 13, 2019**- Planning & Zoning Commission adopts a Resolution of Intention
 - Planning & Zoning Resolution 2019-04 a Resolution of Intention to establish zoning classifications for the parcel at Cleveland Avenue and Washington Avenue
- **April 10, 2019**- Planning & Zoning Commission adopts:
 - Planning & Zoning Resolution 2019-05 making findings of consistency pursuant to Section 15162 of the California Environmental Quality Act Guidelines (CEQA)
 - Planning & Zoning Resolution 2019-06 forwarding a recommendation to the City Council to establish zoning classifications consistent with the General Plan Land Use Map
- **May 6, 2019**- City Council first reading of Ordinance 2019-06 to establish an R-3 Zoning Classification for the subject parcel
- **May 23, 2019**- SAHA hosts the first Community Open House at the Albany Community Center
- **June 3, 2019**- City Council second reading of Ordinance 2019-06 to establish a, R-3 Zoning Classification
- **August 28, 2019**-SAHA hosts a second Community Open House at the Albany Community Center
- **September 10, 2019**-first ENA extension is granted
- **October 21, 2019**-SAHA files Planning Application
- **December 16, 2019**- project approvals are granted pursuant to SB 35
- **March 17, 2020**- second ENA extension is granted
- **August 24, 2020**-Closed Session with City Council
- **September 10, 2020**-third ENA extension is granted
- **October 29, 2020**-Special Meeting with City Council to take action on the Disposition and Development Agreement