

LOAN AGREEMENT

BETWEEN

CITY OF SAN MATEO

AND

MP 2000 DELAWARE LLC

Dated as of December __, 2024

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS AND EXHIBITS	2
Section 1.1 Definitions.....	2
Section 1.2 Exhibits.	8
ARTICLE 2. PRECONSTRUCTION REQUIREMENTS.....	8
Section 2.1 Conditions Precedent to Conveyance of Property.	8
Section 2.2 Governmental Approvals.....	Error! Bookmark not defined.
Section 2.3 Review and Approval of Design and Construction Documents.	Error! Bookmark not defined.
Section 2.4 Financing Plan.	Error! Bookmark not defined.
Section 2.5 Tax Credit Reservation; Financing.	Error! Bookmark not defined.
Section 2.6 Other Approved Financing.	Error! Bookmark not defined.
Section 2.7 Other Governmental Approvals.....	Error! Bookmark not defined.
Section 2.8 Management Plan and Procedures.	Error! Bookmark not defined.
Section 2.9 Construction Contract.	Error! Bookmark not defined.
Section 2.10 Construction Bonds.....	Error! Bookmark not defined.
Section 2.11 Insurance.	8
Section 2.12 Resident Selection Plan.....	Error! Bookmark not defined.
Section 2.13 Condition of Title.....	8
ARTICLE 3. LOAN PROVISIONS	9
Section 3.1 Loan Amount.	9
Section 3.2 Interest.....	9
Section 3.3 Use of Loan.....	9
Section 3.4 Security; Subordination of Regulatory Agreement.....	9
Section 3.5 Repayment Schedule.....	10
Section 3.6 Conditions Precedent to Disbursement of Loan.	11
Section 3.7 Reports and Accounting of Residual Receipts.....	11
Section 3.8 Developer Fee.	12
Section 3.9 Assumption.	13
Section 3.10 Non-Recourse.	13
Section 3.11 Assignment of Collateral Documents.	Error! Bookmark not defined.
ARTICLE 4. CONSTRUCTION OF IMPROVEMENTS	Error! Bookmark not defined.
Section 4.1 Construction Pursuant to Plans.	Error! Bookmark not defined.
Section 4.2 Change in Construction of Improvements.	Error! Bookmark not defined.
Section 4.3 Commencement of Improvements.....	Error! Bookmark not defined.
Section 4.4 Completion of the Improvements.	Error! Bookmark not defined.
Section 4.5 Equal Opportunity.....	Error! Bookmark not defined.
Section 4.6 Compliance with Applicable Law; Prevailing Wage Requirement.	Error! Bookmark not defined.
Section 4.7 Progress Report.	Error! Bookmark not defined.
Section 4.8 Construction Responsibilities.	Error! Bookmark not defined.
Section 4.9 Mechanics Liens, Stop Notices, and Notices of Completion.....	Error! Bookmark not defined.
Section 4.10 Inspections.	Error! Bookmark not defined.
Section 4.11 Information.	Error! Bookmark not defined.

TABLE OF CONTENTS

(Continued)

Page

Section 4.12	Records.	Error! Bookmark not defined.
Section 4.13	Relocation.	Error! Bookmark not defined.
Section 4.14	Bid Package.	Error! Bookmark not defined.
Section 4.15	Financial Accounting and Post-Completion Audits.	Error! Bookmark not defined.
ARTICLE 5. ONGOING DEVELOPER OBLIGATIONS.....		14
Section 5.1	Applicability.	14
Section 5.2	Use.	14
Section 5.3	Maintenance.	14
Section 5.4	Taxes and Assessments.	15
Section 5.5	Mandatory Language in All Subsequent Deeds, Leases and Contracts.	15
Section 5.6	Hazardous Materials.	17
Section 5.7	Management Agent; Periodic Reports.	18
Section 5.8	Approval of Management Plan Modifications.....	Error! Bookmark not defined.
Section 5.9	Resident Services Plan and Resident Services Budget. ..	Error! Bookmark not defined.
Section 5.10	Insurance Requirements.	19
Section 5.11	Audits.	20
Section 5.12	Safety Conditions.	20
Section 5.13	Notice of Litigation.	20
ARTICLE 6. ASSIGNMENT AND TRANSFERS.....		20
Section 6.1	Definitions.....	20
Section 6.2	Purpose of Restrictions on Transfer.....	21
Section 6.3	Prohibited Transfers.....	22
Section 6.4	Permitted Transfers.	22
Section 6.5	Effectuation of Certain Permitted Transfers.	22
Section 6.6	Other Transfers with City Consent.	23
ARTICLE 7. DEFAULT AND REMEDIES.....		23
Section 7.1	General Applicability.....	23
Section 7.2	Fault of City.	23
Section 7.3	Fault of Developer.	23
Section 7.4	Remedies.....	25
Section 7.5	Option Purchase, Enter and Possess.	25
Section 7.6	Acceleration of Note.	26
Section 7.7	Right to Cure at Developer's Expense.	26
Section 7.8	Delivery of Collateral Documents.	Error! Bookmark not defined.
Section 7.9	Rights of Mortgagees.	26
Section 7.10	Remedies Cumulative.	26
Section 7.11	Waiver of Terms and Conditions.....	27

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
ARTICLE 8. SECURITY FINANCING AND RIGHTS OF HOLDERS	27
Section 8.1 No Encumbrances Except for Development Purposes.	27
Section 8.2 Holder Not Obligated to Construct.	Error! Bookmark not defined.
Section 8.3 Notice of Default and Right to Cure.	Error! Bookmark not defined.
Section 8.4 Failure of Holder to Complete Improvements.	Error! Bookmark not defined.
Section 8.5 Right of City to Cure.....	Error! Bookmark not defined.
Section 8.6 Right of City to Satisfy Other Liens.	27
Section 8.7 Holder to be Notified.	27
ARTICLE 9. GENERAL PROVISIONS	28
Section 9.1 Notices, Demands and Communications.	28
Section 9.2 Non-Liability of Public Officials, Employees and Agents.	28
Section 9.3 Forced Delay.	29
Section 9.4 Inspection of Books and Records.	29
Section 9.5 Title of Parts and Sections.	29
Section 9.6 General Indemnification.	29
Section 9.7 Applicable Law.	30
Section 9.8 No Brokers.	30
Section 9.9 Severability.	30
Section 9.10 Legal Actions, Venue.....	30
Section 9.11 Binding Upon Successors.	30
Section 9.12 Parties Not Co-Venturers.	31
Section 9.13 Time of the Essence.	31
Section 9.14 Action by the City.	31
Section 9.15 Representations and Warranties.....	31
Section 9.16 Entry by the City.....	33
Section 9.17 Operating Memoranda; Implementation Agreements.	33
Section 9.18 Amendments.	33
Section 9.19 Multiple Originals; Counterparts.	33
Section 9.20 Complete Understanding of the Parties.	34

TABLE OF CONTENTS

(Continued)

Page

EXHIBITS

Exhibit A:	Legal Description of the Property
Exhibit B:	Financing Plan
Exhibit C:	Form of Regulatory Agreement
Exhibit D:	Form of Promissory Note
Exhibit E:	Form of Deed of Trust
Exhibit F:	Form of Notice of Affordability Restrictions on Transfer of Property
Exhibit G:	Insurance Requirements

LOAN AGREEMENT
(2000 South Delaware)

This Loan Agreement (the "Agreement") is entered into as of December __, 2024 (the "Effective Date"), by and between the City of San Mateo, a California charter city (the "City"), and MP 2000 Delaware LLC, a California limited liability company (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 of San Mateo, as the successor to the Housing Assets of the former Redevelopment Agency of the City of San Mateo ("Redevelopment Agency") pursuant to Part 1.85 of Division 24 of the Health and Safety Code, in particular Section 34176 thereof, owns that certain real property generally located at 2000 South Delaware Street, in San Mateo, California, as further described in the attached Exhibit A and incorporated herein by reference (the "Property").

C. To effectuate the Redevelopment Plans for the San Mateo Downtown Redevelopment Project and the San Mateo Shoreline Redevelopment Project, which were later merged and referred to as the San Mateo Merged Project Area, the Redevelopment Agency divided the Property into two parcels and leased the adjacent parcel at 1990 South Delaware to the Developer for the construction, development, and operation of affordable rental housing to be made available to persons and families of Low Income. The Redevelopment Agency also leased the Property to 2000 Delaware San Mateo LLC, a limited liability company, for the construction, development, and operation of affordable rental housing to be made available to persons and families of Moderate Income.

D. On September 27, 2024, the City, Developer, and 2000 Delaware San Mateo LLC as Assignor executed an Assignment and Amendment to Ground Lease ("Assignment and First Amendment"). The Assignment and First Amendment assigned all of the Assignor's right, title, and interest in that certain unrecorded Amended and Restated Ground Lease dated February 29, 2016 (the "Prior Ground Lease") by and between the Assignor, as tenant, and the City, as lessor, a memorandum of which was recorded with the recorder of the County of San Mateo on March 1, 2016 as Instrument Number 2016-017972 (the "Memorandum of Lease"). The Ground Lease pertains to that certain real property, together with all improvements thereon, located at 2000 S. Delaware Street, San Mateo, California ("Development"), in accordance with the terms of that certain Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement") dated as of July 15, 2024, by and between 2000 Delaware San Mateo LLC as Assignor and Developer as Assignee.

E. The Assignment and First Amendment made certain modifications to the Ground Lease, namely, to deepen the affordability of the units in the Development from Moderate to Low Income, re-start the 55-year rental restriction period, and remove the Developer's option to purchase the Property.

F. On December ___, 2024, the City and Developer executed an Amended and Restated Ground Lease ("Ground Lease"), which amends, restates and supersedes the Ground Lease in its entirety. Under the Amended and Restated Ground Lease, the Developer will acquire a leasehold interest in the Property from the City for a period of ninety-nine (99) years.

G. The Developer's acquisition and operation of the Development for individuals and families of Low Income are not financially feasible without financial assistance from the City. The City therefore desires to provide the Developer with the Loan to provide funding in consideration for operating the Development consistent with this Agreement and the Regulatory Agreement, including (without limitation) the occupancy and affordability restrictions. The amount of the Loan provided pursuant to this Agreement does not exceed the amount of City's assistance necessary to make the Developer's operation of the Development, as restricted by this Agreement, financially feasible.

H. Subject to the terms and conditions of this Agreement, the Loan will be funded with money from the City's General Fund Housing Set-Aside.

I. The Developer intends to finance the remainder of the costs of the Development with public and private sources as more particularly set forth in Exhibit B, attached to this Agreement, which provides the Developer's Financing Plan.

J. 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 Redevelopment Plan by increasing the supply of low income housing available at affordable housing cost.

THEREFORE, the City and the Developer 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 Loan 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 reasonably acceptable to the City using generally accepted accounting principles:

(1) Property taxes and assessments imposed on the Development, as applicable;

(2) Debt service currently due on a non-optional basis (excluding debt service due from residual receipts) on loans associated with the construction and operation of the Development and approved by the City in the approved Financing Plan pursuant to Section 2.4;

(3) 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 pursuant to the terms of Sections 2.8 and 6.7 of this Agreement;

(4) Premiums for property damage and liability insurance;

(5) Any annual license or certificate of occupancy fees required for operation of the Development;

(6) Security services;

(7) Advertising and marketing costs;

(8) Cash deposited into reserves for capital replacements of the Development in an amount of Two Hundred Fifty Dollars per Unit per Year (\$500.00), increasing by 3.5% per annum, or such other amount approved by the City as part of the approved Financing Plan or as approved through the annual budget;

(9) Cash deposited into the "Operating Reserve" to replenish the Operating Reserve; the total sum on deposit in the Operating Reserve at any one time shall be capped at three (3) months of operating expenses from the Development, as indicated in the approved annual operating budget; or such other amount approved by the City as part of the approved Financing Plan and annual operating budgets;

(10) Any unpaid Asset management fees, earned in the amount of \$25,000 per year, payable in arrears and prorated for any partial year, and increasing by 3.0% each January 1st;

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

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

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

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

(15) 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,

(16) Reasonable accounting fees and legal fees;

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

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

(b) "Approved Financing" means the loans, grants, or other financing 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, and includes: A short-term amortized loan from Housing Trust Silicon Valley to finance the acquisition of the Development in the amount shown in the approved Financing Plan (the "HTSV Loan"); A loan from MidPen Housing to finance the acquisition and operation of the Development in the amount shown in the approved Financing Plan (the "Developer Loan").

(c) "Area Median Income" means the median gross yearly income, adjusted for household size, in the County of San Mateo, California, as determined by the United States Department of Housing and Urban Development and the California Department of Housing and Community Development. 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 the State.

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

(e) "City" means the City of San Mateo, a California charter city and its successor and assigns.

(f) "City Council" means the City Council of the City.

(g) "City Documents" shall mean, collectively, this Agreement, the Promissory Note, the Deed of Trust, the Regulatory Agreement, the Notice of Affordability Restrictions on Transfer of Property, the Amended and Restated Ground Lease, and all other documents required

to be executed by the Developer in connection with the transaction contemplated by this Agreement.

(h) "City Event of Default" has the meaning set forth in Section 8.3(a).

(i) "Close of Escrow" means the date of recording of the Deed and the recordation of the Deed of Trust, the Regulatory Agreement, the Notice of Affordability Covenants, and the Amended and Restated Ground Lease.

(j) "County" means the County of San Mateo, California, a political subdivision.

(k) "Deed of Trust" means the Leasehold Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing dated of even date herewith, among Developer, as trustor, Old Republic Title Company, as trustee, and the City, as beneficiary, that will encumber the Developer's leasehold interest in the Property to secure repayment of the Loan and performance of the covenants of the Loan Documents.

(l) "Developer" means MP Delaware, LLC, a California limited liability company and its successors and assigns as permitted by this Agreement.

(m) "Developer Event of Default" has the meaning set forth in Section 7.4(a).

(n) "Developer Fee" means that amount of developer fee in the amount and for the purposes set forth in Section 3.8.

(o) "Development" means the Developer's Leasehold Interest in the Property .

(p) "Effective Date" means the date this Agreement is entered into by the Parties as first written above.

(q) "Escrow" means the escrow established with the Title Company for the purpose of closing the Development financing.

(r) "Financing Plan" means the Developer's plan for financing the Development in the form approved by City and attached hereto as Exhibit B.

(s) "Fiscal Year" shall mean the Developer's fiscal year which ends on December 31, except as the Developer otherwise notifies the City in writing.

(t) "Former Agency" has the meaning set forth in the first paragraph of this Agreement.

(u) "Ground Lease" shall mean that certain Amended and Restated Ground Lease dated as of December __, 2024, and as such may be further amended from time to time.

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

(1) 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;

(2) The proceeds of business interruption or similar insurance (less any deductibles associated therewith not paid from Operating Expenses);

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

(4) 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);

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

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

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

(x) "Improvements" means the sixty (60) affordable housing units (including one manager's unit) together with all common areas, amenities, plans, entitlements, appurtenances, improvement easements, buildings and fixtures, and landscaping associated with the Property.

(y) "Loan" shall mean the loan in an amount not to exceed Five Hundred Thousand Dollars (\$500,000) made from the City to the Developer pursuant to the terms of this Agreement, consisting of General Fund Housing Set-Aside funds.

(z) "Leasehold Interest" shall mean the Developer's leasehold interest in the Property from the City for a period of ninety-nine (99) years pursuant to the Ground Lease.

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

(bb) "Low Income Household" means a household with an adjusted income that does not exceed eighty percent (80%) of area median income, adjusted for actual household size, as published by the California Tax Credit Allocation Committee ("TCAC").

(cc) "Management Agent" means a management agent retained by the Developer and approved by the City in accordance with the provisions of Sections 2.7 and 5.7 to manage the Development.

(dd) "Official Records" means the official land records of the County.

(ee) "Operating Memorandum" has the meaning given in Section 9.17(a) below

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

(gg) "Prior Ground Lease" shall mean that certain unrecorded Amended and Restated Ground Lease dated February 29, 2016 between the City and 2000 Delaware San Mateo LLC, as set forth in Recital D.

(hh) "Promissory Note" means the promissory note that will evidence the Developer's obligation to repay the Loan as set forth in this Agreement, substantially in the form attached hereto as Exhibit D.

(ii) "Property" has the meaning set forth in Recital E.

(jj) "Redevelopment Plan" has the meaning set forth in Recital B.

(kk) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants that will be recorded in the Official Records against the Property upon the Close of Escrow and will restrict the Property to affordable housing, substantially in the form attached hereto as Exhibit C.

(ll) "Resident Services Budget" shall have the meaning specified in Section 5.9(a).

(mm) "Resident Services Plan" shall have the meaning specified in Section 5.9(a).

(nn) "Residual Receipts" in a particular Fiscal Year shall mean the amount by which Gross Revenue exceeds Annual Operating Expenses.

(oo) "Security Financing Interest" has the meaning set forth in Section 9.1.

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

(qq) "Term" means the term of this Agreement, which commences as of the Effective Date this Agreement and, unless terminated earlier or extended by the Parties pursuant to this Agreement, ends fifty-five (55) years from the Close of Escrow (the date the Regulatory Agreement is recorded against the Property).

(rr) "Title Company" means Old Republic Title Company.

(ss) "Title Report" means that certain title report dated May 6, 2020, Order Number 98203129-982-SK-KC, issued by the Title Company for the Property.

(tt) "Transfer" has the meaning set forth in Section 6.1.

(uu) "Unit" means one of the units to be constructed on the Property.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in the Agreement:

- Exhibit A: Legal Description of the Property
- Exhibit B: Financing Plan
- Exhibit C: Form of Regulatory Agreement
- Exhibit D: Form of Promissory Note
- Exhibit E: Form of Deed of Trust
- Exhibit F: Form of Notice of Affordability Restrictions on Transfer of Property
- Exhibit G: Insurance Requirements

ARTICLE 2. CONDITIONS PRECEDENT TO LOAN; CONDITION OF TITLE

Section 2.1 Conditions Precedent to Loan.

The requirements set forth in this Article 2 are conditions precedent to the City's obligation to make the Loan. The City shall have no obligation to disburse any of the Loan unless the Developer has satisfied the conditions precedent set forth in this Article 2 in the manner set forth below.

Section 2.2 Insurance.

The Developer shall furnish to the City evidence of the insurance coverage meeting the requirements set forth in Exhibit G, attached hereto and incorporated herein by this reference, no later than the date set forth in the Development Schedule.

Section 2.3 Condition of Title.

Upon the Close of Escrow, the Developer shall have insurable fee interest in the Improvements which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession

- (a) applicable building and zoning laws and regulations;
- (b) the provisions of this Agreement;
- (c) the provisions of the Regulatory Agreement;
- (d) the Deed of Trust;
- (e) the Notice of Affordability Restrictions;
- (f) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Regulatory Agreement; and
- (g) the liens of any loan approved by the City in the Financing Plan.

ARTICLE 3. LOAN PROVISIONS

Section 3.1 Loan Amount.

Subject to the terms and conditions set forth in the City Documents, the City hereby agrees to make a loan to the Developer of up to Five Hundred Thousand Dollars (\$500,000). The Developer's obligation to pay the Loan shall be evidenced by the Promissory Note.

Section 3.2 Interest.

Simple interest at three percent (3%) per annum shall accrue on the principal amount of the Loan except in a Developer Event of Default, whereupon and during the continuation of which interest shall accrue from and after the date of the Promissory Note until paid at the rate of ten percent (10%) compounded annually, or the highest rate permitted by law.

Section 3.3 Use of Loan.

The Loan shall be used solely in accordance with the Financing Plan approved by the City. The Developer may not use any proceeds of the Loan for any other purpose without the prior written consent of the City.

Section 3.4 Security; Subordination of Regulatory Agreement.

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

(1) All the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide acquisition, construction or permanent financing for the Development, or any combination thereof.

(2) 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 or any of Developer's affiliates, other than as a depositor or a lender.

(3) Developer must demonstrate to the City's reasonable satisfaction that subordination of the Deed of Trust is necessary to secure adequate rehabilitation and/or permanent financing 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, 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 rehabilitation and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(4) The subordination agreement(s) must be structured to minimize the risk that the 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 Developer, including: (i) providing the City or its successor with copies of any notices of default at the same time and in the same manner as provided to Developer; and (ii) providing the City with a cure period of at least sixty (60) days to cure any default.

(5) 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, and to any refinancing of the Senior Loan as approved by the City subject to the City's ability to make the findings required under Health and Safety Code Section 33334.14(a).

(6) No subordination may limit the effect of the 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 City Documents.

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

(b) In no event shall the City subordinate the Regulatory Agreement.

Section 3.5 Repayment Schedule.

The Loan shall be repaid as follows:

(a) Term. The Loan shall have a term that expires on the date fifty-five (55) years from the Close of Escrow (the date on which the Regulatory Agreement is recorded against the Property).

(b) Payments. Commencing on the May 1 first occurring after the full repayment of the Developer Loan, and on each May 1 thereafter throughout the term of the Loan, the Developer shall make repayments of the Loan equal to its pro-rata share of the Lender's Share of Residual Receipts, if any. The Developer shall provide the City in a form to be provided by the City, within sixty (60) days following the end of each of the Developer's Fiscal Year, a report showing the actual income and expenditures with respect to the Development for the immediately preceding Fiscal 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 reasonably approved by the City. Payments made shall be credited first against accrued interest and then against outstanding principal.

(c) Payment in Full. Subject to the provisions of subsection (e) below, all principal and interest, if any, on the Loan shall, at the option of the City, be due and payable upon the earliest of: (1) a Transfer other than a Transfer permitted or approved by the City as provided in Article 6 below; (2) the occurrence of an uncured Developer Event of Default for which the City

exercises its right to cause the Loan indebtedness to become immediately due and payable; or (3) the expiration of the Term specified in (a) above.

(d) Prepayment. The Developer shall have the right to prepay the 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 Loan.

Section 3.6 Conditions Precedent to Disbursement of Loan.

(e) The disbursements made pursuant to this Section may not exceed the amount of the Loan. The City will disburse the Loan in a lump sum of Five Hundred Thousand Dollars (\$500,000) subject to the conditions set forth in subsection (b) below (but in no event before the Close of Escrow),

(a) The City shall not be obligated to make any disbursements of the City Loan proceeds unless the conditions precedent set forth in Article 2 have been satisfied and the following conditions precedent are satisfied:

(1) There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under this Agreement;

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

(3) The Deed of Trust, the Regulatory Agreement, and the Notice of Affordability Restrictions shall have been recorded in the Official Records against the Property as a lien subject only to the exceptions authorized by the City;

(4) The Developer shall have furnished the City with evidence of the insurance coverage meeting the general insurance requirements set forth in Exhibit G;

(5) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing an ALTA 2006 LP-10 Lender's Policy of insurance insuring the lien priority of the Deed of Trust in the amount of the Loan subject only to such liens approved by the City in the Financing Plan as prior to the lien of the Deed of Trust and such exceptions and exclusions as may be reasonably acceptable to the City and containing such endorsements as the City may reasonably require;

(6) The City has received a written draw request from the Developer, including certification that the condition set forth in Section 3.6(b)(1) continues to be satisfied; and

Section 3.7 Reports and Accounting of Residual Receipts.

(a) Audited Financial Statement. In connection with the annual repayment of the Loan, the Developer shall furnish to the City an audited statement duly certified by an

independent firm of certified public accountants reasonably approved by the City, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding calendar year. Either one of the Parties may request to change the pre-approved independent firm of certified public accountants at any time, upon prior written notice.

(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 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 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.

The amount and the terms of the Loan, as provided in this Article 3, have been established by taking into account the anticipated costs of the Project, including a maximum "Developer Fee", not to exceed \$600,000. Except for the Developer Fee and reasonable asset management, property management or partnership management fees that are approved in advance by the City, no compensation from any source shall be received by or be payable to the Developer, any entity

Controlled by the Developer, any General Partner or Member, or any other entity or organization in connection with the acquisition and operation of the Development.

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, subject to the terms of Section 6.5 when applicable.

Section 3.10 Non-Recourse.

(a) Following recordation of the Deed of Trust, and except as provided below, the Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of the Developer under the 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 Deed of Trust shall be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall: (1) limit or impair the enforcement against all such security for the Promissory Note of all the rights and remedies of the City thereunder; or (2) 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 intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

(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 Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Developer of its waiver of liability in Section 3.6 and the Developer's indemnification obligations under this Agreement, or liability for: (1) fraud or willful misrepresentation; (2) 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 Deed of Trust (to the full extent of such taxes, assessments or other charges); (3) the fair market value of any personal property or fixtures removed or disposed of by the Developer other than in accordance with the Deed of Trust; and (4) 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.

(c) Prior to Close of Escrow, except as provided below, the sole recourse of the City after an uncured Event of Default under this Agreement, and with respect to the principal of, or interest on, the Promissory Note shall be to the property described in the Assignment Agreement; provided, however, that nothing contained in the foregoing limitation of liability shall: (1) limit or impair the enforcement against all such security for the Promissory Note of all the rights and remedies of the City thereunder; or (2) 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 intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. 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 Note, except as hereafter set forth; nothing contained herein is intended to relieve the Developer of its

indemnification obligations under this Agreement or any of the City Documents or liability for fraud or willful misrepresentation.

ARTICLE 4. ONGOING DEVELOPER OBLIGATIONS

Section 4.1 Applicability.

The conditions and obligations set forth in this Article 4 shall apply throughout the Term, unless a different period of applicability is specified for a particular condition or obligation.

Section 4.2 Use.

(a) The Developer hereby agrees that, for the entire Term, the Development will be used only for residential use consistent with the Regulatory Agreement.

(b) The Regulatory Agreement shall require that the Units shall be affordable to and occupied by Low Income Households as further specified in the Regulatory Agreement.

Section 4.3 Maintenance.

(a) The Developer agrees, for the entire Term of this Agreement, 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, subject to any restrictions on water use) and in accordance with 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 residents 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 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 Developer breaches any of the covenants contained in this section and such default continues for a period of ten (10) calendar 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. 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.

Section 4.4 Taxes and Assessments.

The 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 the Property or the Developer's leasehold interest in 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 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.

Section 4.5 Mandatory Language in All Subsequent Deeds, Leases and Contracts.

(a) Basic Requirement. The Developer covenants by and for itself, its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, age, source of income, or disability in the sale, lease, sublease transfer, use, occupancy, tenure or enjoyment of the Development nor shall the 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 tenants, lessees, subtenants, sublessees or vendees in the Development. The foregoing covenant shall run with the land.

(b) Provisions in Conveyance Documents. All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any transfer or conveyance of any portion of the Property shall contain therein the following language or language otherwise required by state law:

(1) In Deeds:

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) 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 paragraph (1) 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 paragraph (1)."

(2) In Leases:

"(1) Lessee herein covenants by and for itself, its successors 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) and (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 or any person claiming under or through the lessee, 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.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) 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 paragraph (1) 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 paragraph (1)."

(3) In Contracts:

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) 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 paragraph (1) 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 paragraph (1)."

Section 4.6 Hazardous Materials.

(a) Covenants.

(1) 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.

(2) 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.

(3) 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 or pursuant to any Hazardous Materials Laws (collectively "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 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 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 and to have its reasonable attorney's fees in connection therewith paid by the Developer.

(4) 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.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 10.6 below, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the Indemnified Parties 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: (1) 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 on or after the date of conveyance of the Property to the Developer; (2) 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 to the extent it arises on or after the date of conveyance of the Improvements to the Developer; or (3) any activity carried on or undertaken on or off the Development, subsequent to the conveyance of the Improvements to the Developer, 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. The foregoing indemnity shall not apply to any claims, losses, damages, liabilities, fines, penalties, or charges that are caused by the sole negligence or willful misconduct of the Indemnified Parties. The indemnification provisions of this Agreement shall survive such termination and remain in full force and effect.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (b) above, 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 4.7 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. The City hereby preapproves MidPen Property Management Corporation as Management Agent for the Development. For any change in the Management Agent, the Developer shall submit for the City's reasonable 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.

(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 execution of this Agreement. 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: (1) by not later than thirty (30) days prior to commencement of each Fiscal Year, the annual budget for the upcoming Fiscal Year; (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 Fiscal Year and the status of all reserve funds; and (3) within one hundred fifty (150) days following the end of each Fiscal Year, a copy of the Developer's California return of income tax filings for the Fiscal 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 the Management Plan, the Management Agreement, or the City Documents, the City shall deliver notice to the Developer, and Senior Lender of its intention to cause replacement of the Management Agent along with a detailed explanation of the deficiencies in the management of the Project. Within thirty (30) days of receipt by the Developer of such written notice, if the deficiencies remain uncured, City staff and 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. The Senior Lender, at their discretion may elect to join the meeting between the City and the Developer, if they desire to do so.

If, after such meeting, City staff recommends in writing the replacement of the Management Agent, 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 this Agreement, and the City may enforce this provision through legal proceedings as specified in Article 8. No approval of the Senior Lenders or Investor Limited Partner shall be required for the City to enforce its rights hereunder.

Section 4.8 Insurance Requirements.

(a) Required Coverage. Concurrently with execution of this Agreement, the Developer shall furnish to the City evidence of the insurance coverage meeting the requirements set forth in Exhibit G, attached hereto and incorporated herein by this reference. For the term of

the Agreement, the Developer shall maintain and keep in force, at the Developer's sole cost and expense, the insurance applicable to the Development set forth in Exhibit G.

Section 4.9 Audits.

The Developer shall make available for examination at reasonable intervals and during normal business hours and upon twenty-four hours prior written notice 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 4.10 Safety Conditions.

(a) The Developer acknowledges that the City places a prime importance on the security of City 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) for the entire Term of this Agreement, the Developer shall cause the Management Agent to participate in the San Mateo County Sheriff Department's Crime Free Multi-Housing Unit Program, wherein specialized training and other resources are provided to multi-family property owners and managers to reduce the potential for onsite criminal activity. Completion of the Department's four (4) training phases and a Full Certification (Phase V) shall be achieved and maintained by the Management Agent; and

(3) 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 San Mateo 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.

Section 4.11 Notice of Litigation.

The Developer shall promptly notify the City in writing of any litigation materially affecting Developer, the Developer's ability to perform its obligations under this Agreement, or the Property and of any claims or disputes that involve a material risk of such litigation.

ARTICLE 5. ASSIGNMENT AND TRANSFERS

Section 5.1 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, the Ground Lease, 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 shall not be deemed a Transfer for purposes of this Article.

Section 5.2 Purpose of Restrictions on Transfer.

(a) This Agreement is entered into solely 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:

- (1) The importance of the development of the Improvements to the general welfare of the community;
- (2) The public aid that has been made available by law and by the government for the purpose of making such development possible;
- (3) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the City in the development of the Property;
- (4) 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;
- (5) The fact that the Property is not to be used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and
- (6) The importance to the City and the community of the standards of use, operation and maintenance of the Property.

(b) The Developer further recognizes 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 5.3 Prohibited Transfers.

(a) The limitations on Transfers set forth in this Section shall apply throughout the Term. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer 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 written approval of the City.

(b) 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 5.4 Permitted Transfers.

Notwithstanding the provisions of Section 6.3, the following Transfers shall be permitted and are hereby approved by the City.

(a) Any Transfer creating a Security Financing Interest permitted pursuant to the approved Financing Plan.

(b) 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 7.

(c) The leasing of residential units within the Development in accordance with the Regulatory Agreement.

(d) The granting of easements or permits to facilitate the development or rehabilitation of the Property.

Section 5.5 Effectuation of Certain Permitted Transfers.

(a) No Transfer of this Agreement permitted pursuant to Section 5.4 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 Developer under this Agreement and agree to be subject to the conditions and restrictions to which the 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. 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.

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

Section 5.6 Other Transfers with City Consent.

The City may, in its sole discretion, approve in writing other Transfers as requested by 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 Developer in writing. Such approval shall be granted or denied by the City within sixty (60) days of receipt by the City of 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 the Developer under this Agreement and agree to be subject to the conditions and restrictions to which the 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.

ARTICLE 6.
DEFAULT AND REMEDIES

Section 6.1 General Applicability.

The provisions of this Article shall govern the parties' remedies for breach or failure of this Agreement.

Section 6.2 Fault of City.

(a) The following events each constitute a "City Event of Default" and a basis for the Developer to take action against the City:

(1) The City breaches any material provision of this Agreement (including failure to timely respond to performance time frames set forth in 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 of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating in writing this Agreement (provided, however, that the indemnification provisions of this Agreement shall survive such termination and remain in full force and effect); and (2) prosecuting an action for damages or specific performance.

Section 6.3 Fault of Developer.

(a) The following events each constitute a "Developer Event of Default" and a basis for the City to take action against the Developer:

(1) The Developer fails to comply with any obligation or requirement set forth in Article 3 or Article 4;

(2) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 5;

(3) Any representation or warranty 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;

(4) An event of default occurs under the Deed of Trust, the Promissory Note, or the Regulatory Agreement, subject to all applicable notice and cure periods;

(5) A court having jurisdiction shall have made or entered any decree or order: (i) adjudging the Developer to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of the Developer, or seeking any arrangement for the 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, in bankruptcy or insolvency or for any of their properties; or (iv) directing the winding up or liquidation of the 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 unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (i) as well; 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;

(6) The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection (10) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution;

(7) The Developer shall have been dissolved or shall have voluntarily suspended their business; or

(8) There shall occur any default declared by any lender under any loan document related to any loans, secured by a deed of trust on the Development after the expiration of all applicable cure periods; or

(9) The Developer breaches any other material provision of this Agreement or any material provision in any of the other City Documents which remains uncured after expiration of any applicable cure periods.

Section 6.4 Remedies

(a) Upon the happening of any of the above-described events in Section 7.4, the City shall first notify the Developer in writing of its purported breach, failure or act above described, giving the 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 the Developer 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, Developer 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 by taking any or all of the following remedies:

- (1) Prosecuting an action for damages or specific performance; and
- (2) Any of the remedies specified in Section 7.6 through Section 7.10.

(b) Notwithstanding the notice and cure periods set forth above, with respect to a Developer Event of Default described in subsection 7.4(a)(5), (6), or (7) above, the City may initiate enforcement action, without the provision of any notice, or the passage of any cure period.

Section 6.5 Option to Purchase, Enter and Possess.

(a) The City shall have the additional right at its option to purchase, enter and take possession of the Property and the Improvements or any portion thereof owned by the Developer with all improvements thereon, if there is an uncured Developer Event of Default pursuant to Section 7.4.

(b) Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

- (1) Any approved Senior Lien permitted by this Agreement; or
- (2) Any rights or interest provided in this Agreement for the protection of the holder of such Senior Lien Interests, including any interests held by the Investor Limited Partner.

(c) To exercise its right to repurchase, reenter and take possession with respect to the Property owned by the Developer, the City shall pay to the Developer in cash an amount equal to:

- (1) The Purchase Price paid to the Developer for the Property; plus
- (2) The fair market value of the improvements existing on the

applicable portion of the Property at the time of the repurchase, reentry and repossession; less

(3) Any gains or income withdrawn or made by the Developer from the applicable portion of the Property or the improvements thereon; less

(4) The value of any unpaid liens or encumbrances on the applicable portion of the Property which the City assumes or takes subject to said encumbrances.

Section 6.6 Acceleration of Note.

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

Section 6.7 Right to Cure at Developer's Expense.

The City shall have the right to cure any monetary default by the Developer under a loan in connection with the Development. However, if the Developer is in good faith contesting a claim of default under a loan 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 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 6.8 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.

Section 6.9 Remedies Cumulative.

No right, power, or remedy given 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 6.10 Waiver of Terms and Conditions.

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 this Agreement, or the Regulatory Agreement, 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.

ARTICLE 7.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 7.1 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. 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.

Section 7.2 Right of City to Satisfy Other Liens.

After the Close of Escrow, 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 7.3 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.

ARTICLE 8. GENERAL PROVISIONS

Section 8.1 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 San Mateo
 330 W. 20th Ave.
 San Mateo, CA 94403
 Attn: City Manager

With a copy to:

City of San Mateo
330 W. 20th Ave.
San Mateo, CA 94403
Attention: City Attorney

Developer: MidPen Housing Corporation
 303 Vintage Park Drive, Suite 250
 Foster City, CA 94404
 Attn: Asset Management

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 8.2 Non-Liability of Public Officials, Employees and Agents.

No board member, official, employee or agent of the City, the Former Agency, the Successor Agency, or 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.

No board member, official, employee or agent of the Developer shall be personally liable to the City, the Former Agency, the Successor Agency, or the City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City, the Former Agency, the Successor Agency, or the City or successor or on any obligation under the terms of this Agreement.

Section 8.3 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's 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 agency or entity (other than the acts or failure to act of the City); or any other causes (other than 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) 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) 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 8.4 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 8.5 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 8.6 General Indemnification.

The Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its council members, officers, agents and employees (together, the "Indemnified Parties") 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 8.7 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 8.8 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 8.9 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 8.10 Legal Actions, 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 San Mateo. 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 party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorney's fees and costs incurred in such action.

Section 8.11 Binding Upon Successors.

(a) 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.

(b) 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 8.12 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 8.13 Time of the Essence.

In all matters under this Agreement, the parties agree that time is of the essence.

Section 8.14 Action by the City.

Except as may be otherwise specifically provided in this Agreement or another City Document, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement or another City Document, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to the Developer by the City Manager, without further approval by the City Board. Any such action shall be in writing.

Section 8.15 Representations and Warranties.

(a) The Developer hereby represents and warrants to the City as follows:

(1) Organization. The Developer 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.

(2) Authority of Developer. 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.

(3) 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 Developer, and all actions required under the 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.

(4) 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.

(5) 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 agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(6) 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 agency.

(7) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Improvements.

(8) Title to Improvements. Developer holds good and marketable fee title to the Improvements 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.

(9) Financial Statements. The financial statements of the Developer 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 the Developer from that shown by such financial statements and other data and information.

(b) The City hereby represents and warrants to the Developer as follows:

(1) Authority. City is a California charter city, which has been authorized to transact business pursuant to action of the City and pursuant to the applicable sections of Community Redevelopment Law and the Dissolution Statutes. To the best of the City's knowledge, the City has full right, power and lawful authority to make the Loan as provided herein and the execution, performance and delivery of this Agreement by City has been fully authorized by all requisite actions.

(2) FIRPTA. City is not a "foreign person" as defined by FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA and any similar state statute.

Section 8.16 Entry by the City.

The Developer shall permit the City, through its officers, agents, or employees, at all reasonable times, and upon forty-eight hours' prior written notice, to enter into the Development 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 is 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 its 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 8.17 Operating Memoranda; Implementation Agreements.

(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 for those items covered in general terms under this Agreement. If and when, from time to time, the parties find that refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the parties which, after execution shall be attached to this Agreement as addenda and become a part hereof, each an "Operating Memorandum". This Agreement describes some, but not all, of the circumstances in which the preparation and execution of operating memoranda or implementation agreements may be appropriate.

(b) Operating memoranda or implementation agreements may be executed on the City's behalf by the City Manager, or the City Manager's designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with this Section and must be approved by the City Council.

Section 8.18 Amendments.

The parties can amend this Agreement only by means of a writing executed by the Developer and the City.

Section 8.19 Multiple Originals; Counterparts.

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

Section 8.20 Complete Understanding of the Parties.

This Agreement constitutes the entire understanding and agreement of the parties. All prior discussions, understandings and written agreements are superseded by this Agreement. The Developer and the Developer's counsel have read and reviewed this Agreement and agree that any rule of construction (including, but not limited to Civil Code Section 1654, as may be amended from time to time) to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

[Signatures on following page]

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

DEVELOPER:

MP 2000 DELAWARE, LLC, a California limited partnership

By: Mid-Peninsula Greenridge, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Matthew O. Franklin, Assistant Secretary

Date: _____

CITY:

CITY OF SAN MATEO, a California charter city

By: _____
Alex Khojikian, City Manager

Approved as to Form:

By: _____
Prasanna W. Rasiah
City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

TO BE INSERTED

EXHIBIT B

FINANCING PLAN

2000 Delaware Sources and Uses		
Sources	Permanent	Percent
Private Debt	\$ 17,600,000	73.2%
City of San Mateo	\$ 500,000	2.1%
Combined Developer Loan	\$ 5,950,000	24.7%
Total Sources	\$ 24,050,000	
Uses	Permanent	Percent
Acquisition Cost	\$ 22,500,000	93.6%
Capital Improvements	\$ 221,683	0.9%
MidPen DD Reports and Studies	\$ 27,535	0.1%
HTSV Loan Origination Fee	\$ 176,000	0.7%
Other Lender Fees	\$ 54,070	0.2%
Legal	\$ 20,611	0.1%
Lease-Up	\$ -	0.0%
Capitalized Operating Reserve	\$ 54,025	0.2%
Capitalized Replacement Reserve	\$ 200,000	0.8%
Closing Fees	\$ 27,326	0.1%
City Transfer Fee (Buyer portion)	\$ 168,750	0.7%
Sponsor Fee	\$ 600,000	2.5%
Total Uses	\$ 24,050,000	
\$ 400,833 per unit		

EXHIBIT C
FORM OF REGULATORY AGREEMENT
TO BE INSERTED

EXHIBIT D
FORM OF PROMISSORY NOTE
TO BE INSERTED

EXHIBIT E
FORM OF DEED OF TRUST
TO BE INSERTED

EXHIBIT F

FORM OF NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF
PROPERTY

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Mateo
330 W. 20th Avenue
San Mateo, CA 94403
Attention: City Manager

NO FEE FOR RECORDING PURSUANT
TO GOVERNMENT CODE
SECTIONS 6103 AND 27383

APN:

(Space above this line for Recorder's Use)

**NOTICE OF AFFORDABILITY RESTRICTIONS
ON TRANSFER OF PROPERTY**

NOTICE IS HEREBY GIVEN, that the City of San Mateo, a California charter city (the "City") has required MP 2000 Delaware, LLC a California limited liability company (the "Owner") to enter into certain affordability covenants and restrictions entitled, Regulatory Agreement and Declaration of Restrictive Covenants (the "Restrictions"), with reference to a housing development (the "Development") to be constructed on that certain real property (the "Property") located in the City of San Mateo, San Mateo County, 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. Fifty-nine (59) Units, including 59 two-bedroom units shall be rented to and occupied by or, if vacant, available for occupancy by households whose gross income does not exceed one hundred percent (100%) of Area Median Income as adjusted by household size for San Mateo County, and at least forty-nine percent (49%) of those units shall be further rent-restricted for occupancy by low income households whose gross income does not exceed eighty percent (80%) of Area Median Income as adjusted by household size for San Mateo County;

2. Manager's Unit. One (1) one-bedroom Unit shall be available for designation as the manager's unit and shall not be income restricted;
3. 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.

The Restrictions have been recorded concurrently herewith, and shall remain in effect for fifty-five (55) years from the date the Regulatory Agreement is recorded with the Office of the San Mateo County Recorder.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Notice of Affordability Restrictions on Transfer of Property on or as of November __, 2024.

CITY:

CITY OF San Mateo, a California charter city

By: _____
Alex Khojikian, City Manager

OWNER:

MP 2000 Delaware, LLC, a California limited liability company

By: _____
Matthew O. Franklin, Assistant Secretary

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, 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

TO BE INSERTED

EXHIBIT G

INSURANCE REQUIREMENTS

(a) Developer shall maintain the following insurance coverage throughout the Term of the Loan:

(1) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(2) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(3) Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(4) Builders' Risk insurance during the course of construction and upon completion, property insurance covering the Development, in a 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.

(5) Commercial crime insurance covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount approved by the City, naming the City a Loss Payee, as its interests may appear which insurance shall be maintained only until the entire balance of the Loan has been disbursed.

(b) Developer shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Developer or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (1), (2), and (3) above, except that the limit of liability for commercial general liability insurance for subcontractors must be One Million Dollars (\$1,000,000), and must require that such insurance will meet all of the general requirements of subsections (d) and (e) below.

(c) The required insurance must be provided under an occurrence form, and Developer shall maintain the coverage described in subsection (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.

(d) Commercial General Liability, Automobile Liability and Property insurance policies must be endorsed to name as an additional insured the City and its officers, agents, employees and members of the City Council.

(e) 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 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.