

DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

BETWEEN

THE CITY OF SAN MATEO

AND

MP DOWNTOWN SAN MATEO ASSOCIATES, L.P.

Dated as of August 17, 2020

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DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

This Disposition, Development and Loan Agreement (the "Agreement") is entered into as of _____, 2020 (the "Effective Date"), by and between the City of San Mateo, a California charter city (the "City"), and MP Downtown San Mateo Associates, L.P., a California limited partnership (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 acting as Successor Agency to the Redevelopment Agency of the City of San Mateo adopted a Long Range Property Management Plan in August 2014 that specified that the properties at 480 East 4th Avenue and 400 East 5th Avenue (the "Properties") were to be transferred to the City of San Mateo for future development. The Long Range Property Management Plan was approved by the California Department of Finance on December 17, 2014.

C. The City acquired the properties from the Successor Agency to the Redevelopment Agency of the City of San Mateo in March 2015.

D. In accordance with Government Code Section 54221(f)(1)(F), the City's lease of the Properties to Developer is exempt from the state Surplus Lands Act because the lease is for a housing development that will restrict 100 percent of the residential units to persons and families of low or moderate income, with at least 75% of the residential units restricted to lower income households as defined in Health and Safety Code Section 50079.5.

E. On September 7, 2017, the City issued a Request for Proposal (the "RFP") to select a developer for the purpose of constructing and operating housing and constructing a public parking garage to be operated by the City on the properties located at 480 East 4th Avenue and 400 East 5th Avenue. The Developer responded to the RFP with a proposal dated November 2, 2017 and was selected as the developer of the Site.

F. The City and the Developer desire for the Developer to develop the "Residential Improvements", consisting of approximately two hundred and twenty five (225) units, including two (2) unrestricted manager units, of multi-family rental housing for low income households located on 480 East 4th Avenue and the pedestrian bridge connecting to the Garage Improvements in the airspace over the adjacent public street as shown in Exhibits A-1 and A-2 ("the Residential Property").

G. The City and the Developer desire for the Developer to construct the "Garage Improvements" consisting of the construction of no more than six hundred ninety-six parking spaces (696) on 400 East 5th Avenue (the "Garage Property").

H. The City will ground lease the Residential Property to the Developer, will license the Garage Property to the Developer during the construction of the Garage Improvements, and will enter into an appurtenant easement dedicating no less than 164 parking spaces on the Garage Property, for the term of the Ground Lease, to the Residential Development.

I. 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 increasing the supply of low income housing available at affordable housing cost within the City.

J. The Developer's construction and operation of the Development is not financially feasible without the City's financial assistance. The City therefore desires to provide the Developer with the City Loans to provide construction funding in consideration for the Developer's agreement to construct and operate the Residential Development and to construct the Garage Development, as applicable, consistent with this Agreement and the Regulatory Agreement, including (without limitation) the occupancy and affordability restrictions. The amount of the City Loans provided pursuant to this Agreement does not exceed the amount of City's assistance necessary to make the Developer's acquisition of the leasehold interest in the Property and the construction and operation of the Development, as applicable, as restricted by this Agreement, financially feasible.

K. The City (in its capacity as "lead agency") has approved the entitlement application for the Development and, in accordance with the California Environmental Quality Act and the National Environmental Policy Act, has adopted a mitigated negative declaration and finding of no significant impact for the Development.

L. In accordance with the Employee Rental Housing law, codified at Government Code Sections 54700.1 and following, the City is providing assistance to this project and a portion of the units will be prioritized for public employees.

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

ARTICLE 1.
SUBJECT OF AGREEMENT

Section 1.1 Recitals.

The parties hereby confirm the accuracy of the foregoing Recitals which are incorporated herein by this reference.

Section 1.2 Purpose.

The purpose of this Agreement is to provide the terms and conditions under which the Developer shall prepare or cause to be prepared all required documents necessary to receive all required permits and approvals to construct the Residential and Garage Improvements, collectively referred to as the "Development", to obtain either title or irrevocable access until construction completion to the Property, as applicable, and to complete construction of the Development. Furthermore, this Agreement shall provide the terms and conditions under which the City shall convey the Residential Property to the Developer and provide irrevocable access to the Garage Property to the Developer, and under which the City will contribute certain funds for the development of the Property.

Section 1.3 Parties to this Agreement.

(a) The City of San Mateo ("City"), a California charter city. The office of the City is located at 330 West 20th Avenue, San Mateo, California 94403.

(b) MP Downtown San Mateo Associates, L.P., a California limited partnership, (the "Developer") in which Mid-Peninsula Baker Park, Inc., a California corporation, is the sole member/manager of the general partner, MP Downtown San Mateo, LLC, a Limited Liability Company. For purposes of this agreement, the principal address of 303 Vintage Park Drive, Suite 250, Foster City, California 94404.

Section 1.4 Term.

Upon delivery of both the Garage Improvements Certificate of Completion and Residential Improvements Certificate of Completion (each as defined below), this Agreement shall be terminated and of no further force and effect (provided, however, that those provisions of this Agreement that recite that they survive termination of this Agreement shall all remain in full force and effect). The Parties agree to execute any documents necessary at that time to satisfy the Title Company and any lenders that this Agreement has been terminated and is of no further force and effect.

Section 1.5 Definitions.

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

(a) "Agreement" means this Disposition, Development and Loan Agreement, including the attached Exhibits and all subsequent operating memoranda and amendments to this Agreement.

(b) "AMI" means the median gross yearly income, adjusted for household size, in the County of San Mateo, California, as determined by the California Tax Credit Allocation Committee. 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.

(c) "Annual Operating Expenses" with respect to a particular fiscal year shall mean the following costs reasonably and actually incurred for operation and maintenance of the Residential Development to the extent that they are consistent with the annual budget for the Residential Development, approved by the City pursuant to the Regulatory Agreement and 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 Residential Development;
- (2) Debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Residential Development) on loans associated with construction of the Residential Development and approved by the City in the Financing Plan pursuant to Section 5.4.
- (3) Property management fees and reimbursements;
- (4) Premiums for property damage and liability insurance;
- (5) Utility services not paid for directly by tenants, including water, electrical, sewer, and trash collection;
- (6) Maintenance and repair;
- (7) Any annual license or certificate of occupancy fees required for operation of the Residential Development;
- (8) Security services;
- (9) Advertising and marketing;
- (10) Cash deposited into reserves for capital replacements of the Residential Development;
- (11) Cash deposited into an operating reserve;
- (12) Resident services;
- (13) Any previously unpaid portion of the Developer Fee due (without interest) not exceeding a cumulative amount of the Developer Fee;
- (14) An annual partnership management fee of Twenty-Five Thousand Dollars per year (\$25,000) adjusted annually at three percent (3%) (Which shall accrue if not paid) and other fees approved by Senior Lenders included in the approved Financing Plan;
- (15) An annual audit fee;

- (16) Extraordinary operating costs specifically approved in writing by the City as part of the annual budget approval process pursuant to the Regulatory Agreement;
- (17) Payments of deductibles in connection with casualty insurance claims not normally paid from reserves;
- (18) Fidelity bond premiums;
- (19) The amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves; and
- (20) Other ordinary and reasonable operating expenses approved in the Financing Plan or as otherwise approved in writing by the City and not listed above.
- (21) Annual Operating Expenses shall exclude the following: depreciation, amortization, depletion or other non-cash expenses; initial deposits to establish the operating reserve and the replacement reserve and any amount expended from a reserve account; and any capital cost with respect to the Development not otherwise listed above, as determined by the accountant for the Residential Development.

(d) "Approved Financing" shall be limited to all of the funds acquired by the Developer and approved by the City for the purpose of financing the Development and listed in the approved Financing Plan.

(e) "Certificate of Occupancy" means the final certificate of occupancy issued by the City, or comparable City sign-off on the completion of construction of the Garage Improvements, and Residential Improvements, as applicable.

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

(g) "City Council" means the City Council of the City of San Mateo.

(h) "City Documents" shall mean, collectively, this Agreement, the Ground Lease, the Promissory Note, the Leasehold Deed of Trust, the Regulatory Agreement, the Garage License Agreement, the Garage Easement, the Garage Maintenance Agreement and all other documents required by the City to be executed by the Developer in connection with the transaction contemplated by this Agreement.

(i) "City Event of Default" has the meaning set forth in Section 11.3.

(j) "City Loans" shall mean a loan, or loans, in an amount of Twelve Million Five Hundred Thousand Dollars (\$12,500,000) consisting of "Garage Loan" and "Residential

Loans” , made from the City to the Developer pursuant to the terms of this Agreement and as further described in Section 3.1.

(k) "Closing Date" means the date of recording of the Memorandum of Ground Lease, Leasehold Deed of Trust and execution of the Garage License Agreement and Garage Easement Agreement.

(l) “Compensation Agreement” means the agreement to be negotiated between the City and the taxing entities that are the successors to the former Redevelopment Agency to govern the distribution of proceeds from the disposition of the Properties.

(m) "Construction Plans" means all construction documentation upon which the Developer, and the Developer's contractors, shall rely in building each and every part of the Improvements (including landscaping, parking, and common areas) and shall include, but not necessarily be limited to, architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings") and a time schedule for construction. For the purposes of this Agreement, “Construction Plans” shall refer to the individual construction plans for the Residential Improvements or the Garage Improvements, or both collectively, as applicable.

(n) "Developer" means MP Downtown San Mateo Associates, L.P., a California limited partnership, and its permitted successors and assigns.

(o) "Developer Event of Default" has the meaning set forth in Section 11.4.

(p) "Developer Fee" means that amount of fee paid to the Developer in the amount and for the purposes set forth in Section 4.8.

(q) "Development" means the Garage Development and the Residential Development.

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

(s) "Financing Plan" has the meaning set forth in Section 5.4.

(t) “Garage Development” means the Garage Property and the Garage Improvements.

(u) “Garage Improvements” has the meaning as set forth in Recital F, above.

(v) “Garage Improvements Certificate of Completion” has the meaning set forth in Section 7.7(b).

(w) “Garage Easement Agreement” means that easement agreement between the City and Developer to be recorded in the official records of San Mateo County, whereby City shall grant an appurtenant easement, for the term of the Ground Lease, against the Garage Property for no less than 164 parking spaces to benefit the Residential Development, in

substantially the form attached to this Agreement as Exhibit G, incorporated herein by this reference.

(x) “Garage Loan” means the loan funds provided by the City In-Lieu Parking Fund for Garage Improvements as further described in Section 3.1.

(y) “Garage License Agreement” means that irrevocable license agreement, between the City and the Developer, whereby the City shall allow the Developer access to the Garage Property in order to construct the Garage Improvements as provided by this Agreement, in substantially the form attached to this Agreement as Exhibit F, incorporated herein by this reference.

(z) “Garage Maintenance Agreement” means that agreement between the City and Developer governing roles and responsibilities for the ongoing operation and maintenance of the Garage Improvements once the Garage Improvements have been completed and are in operation, in substantially the form attached to this Agreement as Exhibit H, incorporated herein by this reference.

(aa) “Garage Property” means the City-owned property at 400 East 5th Avenue.

(bb) “General Public Employees” are defined as those who work for the City of San Mateo, County of San Mateo, ten additional taxing entities that are the successors to the former Redevelopment Agency, or the State of California, or the Federal Government of the United States.

(cc) "Gross Revenue" with respect to a particular fiscal year shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Residential Development. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, interest on tenant security deposits not otherwise required to be paid to tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; net proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance and not paid to Senior Lenders; the proceeds of casualty insurance not used to rebuild the Development or replace damaged property and not paid to Senior Lenders; and condemnation awards for a taking of part or all of the Development for a temporary period not paid to Senior Lenders. Gross Revenue shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

(dd) "Ground Lease" means the ground lease, between the City and the Developer, whereby the Developer shall lease the Residential Property from the City, in substantially the form attached to this Agreement as Exhibit E, incorporated herein by this reference.

(ee) "Hazardous Materials" means

- (1) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;
- (2) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;
- (3) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq.), Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and
- (4) Any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Development.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, operation, or maintenance, of residential developments, or typically used in office or residential activities; or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Development, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

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

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

(hh) "Improvements" means the Garage Improvements and the Residential Improvements.

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

(jj) "Leasehold Deed of Trust" means the leasehold deed of trust that will encumber the Developer's leasehold interest in the Residential Property to secure repayment of the Promissory Note, in a form to be agreed to by the Parties.

(kk) "Memorandum of Disposition, Development, and Loan Agreement" means the memorandum of the Disposition, Development, and Loan Agreement to be recorded against the Developer's leasehold interest in the Residential Property at the Closing Date, in a form to be agreed to by the Parties.

(ll) "Memorandum of Ground Lease" means the memorandum of the Ground Lease to be recorded against the Developer's leasehold interest in the Residential Property at the Closing Date, in a form to be agreed to by the Parties.

(mm) "Parties" means the City and the Developer.

(nn) "Partnership Agreement" means an agreement of limited partnership and related documents (including, without limitation, a budget for the use of capital contributions, any funding agreement, and any option and/or right of first refusal for MidPen Housing Corporation, or an affiliate thereof, to repurchase the Development from the Developer).

(oo) "Permanent Financing" means the sources of approved permanent financing as listed in the approved Financing Plan.

(pp) "Promissory Note" shall mean the promissory notes that will evidence the Developer's obligation to repay the City Loans as set forth in this Agreement. There will be three promissory notes in total, one for the Garage Loan and one for each funding source for the Residential Loan.

(qq) "Property" refers to the City-owned properties at 480 East 4th Avenue, 400 East 5th Avenue, and the adjacent public street located between the two properties.

(rr) "RFP" has the meaning set forth in Recital D, above.

(ss) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants that will be recorded against the Developer's leasehold interest in the Residential Property upon execution of the Ground Lease and will restrict that portion of the Development and use of that portion of the Development to be constructed on the Residential Property to affordable housing, in a form to be agreed to by the Parties.

(tt) "Residential Development" means the Residential Property and the Residential Improvements.

(uu) "Residential Improvements" has the meaning as set forth in Recital E, above.

(vv) "Residential Improvements Certificate of Completion" has the meaning set forth in Section 7.7(a).

(ww) "Residential Loans" means the loan funds provided by the City for Residential Improvements that will be provided by more than one funding source as further described in Section 3.1.

(xx) "Residential Property" means the City-owned property at 480 East 4th Avenue and the airspace in which the pedestrian bridge is located over the adjacent public street, as shown in Exhibit A-1 and A-2. Exhibit A-2 is the current legal description for the airspace determined by design data. Parties are to mutually agree on the final legal description at the Closing Date. The City Manager or his/her designee will be authorized to approve the final legal description without the necessity of any further action or approval.

(yy) "Residential Property Management Agent" means MidPen Property Management Corporation, or a management agent retained by the Developer and approved by the City to manage the Residential Development

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

(aaa) "Schedule of Performance" means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve disposition of the leasehold interest in the Residential Property to the Developer, the construction of the Improvements, and the execution of the Garage License Agreement and Garage Easement Agreement. The Schedule of Performance is attached hereto as Exhibit C.

(bbb) "Security Financing Interest" has the meaning set forth in Section 12.1.

(ccc) "Tax Credits" means federal low-income housing tax credits established pursuant to Section 42 of the Internal Revenue Code of 1986, as amended.

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

(eee) "Tax Credit Funds" means the proceeds generated from the sale of limited partnership interest in the Developer to the Investor in the anticipated amount set forth in the Financing Plan, or such other amount as may be approved by the City in an amended Financing Plan.

(fff) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until this Agreement is terminated.

(ggg) "Title Company" means the Oakland office of Old Republic Title Company, located at 555 12th St., Suite 2000, Oakland, California, 94607, unless modified pursuant to Section 6.3

(hhh) "Tranche C Loan" means a City-approved loan provided to the Developer by MidPen Housing Corporation or its affiliate, or another lender approved by Developer and the City, that is required to be repaid from 90% of Residual Receipts.

(iii) "Transfer" has the meaning set forth in Section 10.1.

(jjj) "Unit" means one of the residential units to be constructed on the Residential Property.

Section 1.6 Exhibits.

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

Exhibit A-1 and A-2: Legal Description of the Property
Exhibit B: Development Plan
Exhibit C: Schedule of Performance
Exhibit D: Initial Financing Proposal
Exhibit E: Form of Ground Lease
Exhibit F: Form of Garage License Agreement
Exhibit G: Form of Garage Easement Agreement
Exhibit H: Garage Maintenance Agreement

ARTICLE 2.
PROJECT DESCRIPTION

Section 2.1 Project Structure.

The Development is divided into two components, the "Residential Improvements" to be completed as the "Residential Development" be located on the 480 East 4th Avenue property and the airspace over the adjacent public street, and the "Garage Improvements" to be completed as the "Garage Development" located on the 400 East 5th Avenue property. These improvements will be constructed concurrently and together make up the Development, as approved and entitled by the City.

Section 2.2 Residential Improvements

The Residential Improvements consist of approximately two hundred and twenty five (225) units, including two unrestricted manager units, of multi-family rental housing, to be made available to and occupied by low income households, and including all common areas, amenities, plans, entitlements, appurtenances, improvements easements, buildings and fixtures associated with the Residential Property. The residential units will be a mix of studios, one, two, and three-bedroom apartments. On-site amenities include a laundry room, and community space, and an interior courtyard with a play structure. The Residential Improvements will include a restricted-access pedestrian bridge for the Residential Development's tenants, located in the airspace over the adjacent public street, connecting the Residential Improvements to the Garage Improvements.

(a) The Residential Improvements shall be owned, maintained, and operated by the Developer.

(b) Monthly rents will be calculated based on the household income, adjusted for household and apartment size. The income levels targeted will range from 30% AMI to at or below 80% AMI. One hundred and twenty-one (121) units will target households earning from at or below 30% AMI to at or below 60% AMI.

(c) One hundred and two (102) units will target households earning from 60% to at or below 80% AMI.

(d) A live or work preference for the City of San Mateo will be applied to all units to the extent permitted by law and the other Project funding sources.

(e) Twenty-five percent (25%) of units will have a preference for General Public Employees to the extent permitted by law and the other project funding sources. Said General Public Employees who live or work in the City of San Mateo will be eligible for dual preferences, in conjunction with (d) above. In the event that there is insufficient number of General Public Employees who live or work in the City of San Mateo and the twenty-five percent (25%) threshold is not met, the remaining available units will be rented to General Public Employee regardless of the location of their employment or residence. Notwithstanding anything to the contrary contained herein, to the extent the preferences required under this Section are in conflict with the requirements of Section 42 of the Internal Revenue Code and implementing guidelines, the requirements of Section 42 will supersede.

Section 2.3 Garage Improvements

The Garage Improvements consist of the construction of no more than six hundred ninety-six parking spaces (696) in a five-level, stand-alone parking structure, including all common areas, amenities, plans, entitlements, appurtenances, improvements easements, buildings and fixtures associated with the Garage Property. The garage will be served by one elevator and two stairwells.

(a) The Garage Improvements shall be owned, maintained and operated by the City.

(b) The City will dedicate, through an appurtenant easement, no less than one hundred and sixty-four (164) parking spaces for exclusive use of the Residential Development for the term of the Ground Lease. The form of the Garage Easement Agreement is included as Exhibit G.

(c) Two hundred and thirty-five (235) parking spaces are replacing existing public parking spaces on the Properties and two hundred and ninety-seven (297) additional parking spaces will be dedicated as public parking for a total of five hundred and thirty-two (532) public parking spaces.

(d) The City and Developer will enter into a Garage Maintenance Agreement to govern the ongoing operation and maintenance of the Garage Improvements, the form of which is included as Exhibit H.

Section 2.4 Construction Phasing

The Development will be constructed in a single phase.

ARTICLE 3.
CITY FINANCIAL ASSISTANCE

Section 3.1 City Loans.

(a) The City shall provide the City Loans to the Developer as construction financing in the principal amount of Twelve Million and Five Hundred Thousand Dollars (\$12,500,000), provided the Financing Plan reasonably demonstrates that the amount requested as the City Loans is necessary to enable the construction of the Improvements contemplated by this Agreement. The Developer's obligation to pay the City Loans shall be evidenced by the Promissory Notes.

(b) Of the total loan amount, the City will provide \$5.0 million from the City's In-Lieu Parking Fund to assist with the cost of the Garage Improvements, referred to hereafter as the "Garage Loan".

(c) Of the total loan amount, the City will provide \$7.5 million to support the construction of the Residential Improvements, referred to hereafter as the "Residential Loans". The source of these funds will be approximately as follows.

- (1) \$2,850,000 million from the Low-Moderate Income Housing Asset Fund.
- (2) \$4,000,000 from the City's Commercial Linkage Fee (CLF) Fund. These funds may be eligible as matching funds for the California Local Housing Trust Fund (LHTF) Program which will be awarded in Fall 2020. The City may grant these funds to HEART, the San Mateo County Regional Housing Trust, in order to apply for LHTF for an estimated additional \$2,000,000 for the project. If awarded LHTF, HEART will lend the City's CLF funds to Developer with the same loan terms as described in this Agreement.
- (3) \$650,000 from the City's HOME funding program income.

Section 3.2 Ground Lease

The Ground Lease for the Residential Property will be provided to the Developer for a term of 99 years at the rate of \$1 per year for the duration of the term.

Section 3.3 Permit Fee Waivers

The City will waive all City-imposed planning application, environmental review, building permit, and plan check fees for the Development and will reimburse the Developer for fees paid to date at the time that this agreement is executed

ARTICLE 4.
CITY LOANS TERMS

Section 4.1 Interest on City Loans

- (a) The Garage Loan shall accrue zero percent (0%) interest per annum.
- (b) The Residential Loans shall accrue simple interest at zero percent (0%) per annum on the principal amount except in a Developer Event of Default, whereupon interest shall accrue from and after the date of the Promissory Note until paid at the lower of: five percent (5%), or the highest rate permitted by law.

Notwithstanding the foregoing, prior to the Closing Date, the City Manager shall have the right, in his or her reasonable discretion, to increase the interest rate on the Residential Loans to as high as three percent (3%) upon receipt of adequate documentation establishing that the Project is still financially feasible with such interest rate increase.

Section 4.2 Use of City Loans.

The City Loans shall be used solely for construction and permanent financing in accordance with the Financing Plan to be approved by the City.

Section 4.3 Security; Subordination of Regulatory Agreement.

(a) The City agrees to subordinate the Leasehold Deed of Trust and Regulatory Agreement 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 the Developer's affiliates, other than as a depositor or a lender.
- (3) The Developer must demonstrate to the City's reasonable satisfaction that subordination of the Leasehold Deed of Trust and/or Regulatory Agreement is necessary to secure adequate construction, 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, the Developer must provide to the City, evidence demonstrating that the proposed amount of the Senior Lien is necessary to provide adequate

construction, 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 Leasehold Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by the Developer, including: (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 the 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 Lien and any extension of its term or refinancing approved in writing by the City, and to any refinancing of the Senior Lien as approved by the City, in its reasonable discretion, 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 Leasehold Deed of Trust and/or Regulatory Agreement before a foreclosure.
- (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.
- (8) In addition, any agreement to subordinate shall comply with the requirements of Health and Safety Code Section 33334.14.

Section 4.4 Conditions Precedent to Disbursement of City Loans.

The City shall not be obligated to make any disbursements of the City Loans proceeds for costs of the Development unless the following conditions precedent are satisfied prior to each such disbursement of the City Loans:

- (1) To the best of the Developer's knowledge there exists no Default by Developer nor any act, failure, omission or condition that would constitute an event of Default by Developer under this Agreement or any other project financing agreements or contracts;
- (2) The Developer shall provide the City with a certified copy of an authorizing resolution, approving this Agreement, the Ground

Lease, the Garage License Agreement, the Garage Easement Agreement and the conditions and covenants set forth in this Agreement, the Ground Lease, the Garage License Agreement and the Garage Easement Agreement;

- (3) The City has leased the Property to the Developer, the Developer has executed and delivered to the City the City Documents and the Memorandum of Ground Lease, the Leasehold Deed of Trust, and the Regulatory Agreement have been recorded against the Developer's leasehold interest in the Property;
- (4) The Developer has received all governmental approvals and all building permits necessary to perform the construction work pursuant to the terms of this Agreement;
- (5) The City has received and approved the general contractor's construction contract or contracts that the Developer has entered or proposed to enter for construction of the Development as required pursuant to Section 7.2 below;
- (6) The City has approved: (i) the copy of the labor and material (payment) bond; and (ii) the copy of the performance bond from the Developer for the construction of the Improvements as required pursuant to Section 7.3 below;
- (7) The Developer has identified and secured sources of construction financing for the Development and has provided evidence reasonably acceptable to the City that the Developer is prepared to commence construction of the Improvements no later than the date set forth in the Schedule of Performance;
- (8) The Developer has furnished the City with evidence of insurance coverage meeting the requirements of this Agreement;
- (9) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing an LP-10 2006 ALTA Lender's Policy of insurance insuring the priority of the Regulatory Agreement and Leasehold Deed of Trust in the amount of the City Loan subject only to such exceptions and exclusions as may be reasonably acceptable to the City, and containing such endorsements as the City may reasonably require; and
- (10) The City has reviewed and approved the Financing Plan as outlined in Section 5.4.

Section 4.5 Disbursement of City Loans

The Residential Loans shall be disbursed to the Developer within 15 business days of the City's receipt of a written draw request from Developer, including certification that the conditions set forth in Section 4.4 continues to be satisfied, and setting forth the proposed uses of funds consistent with the Financing Plan, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. The Garage Loan shall be disbursed to Developer in one lump sum on the Closing Date.

Section 4.6 Repayment Schedule for the Residential Loans.

The Residential Loans shall be repaid as follows:

(a) Term. The Residential Loans shall have a term that expires on the date fifty-seven (57) years from the Closing Date.

(b) Payments. Commencing on the May 1 occurring after the fiscal year in which the Residential Improvements are completed pursuant to this Agreement, and on each May 1 thereafter throughout the term of the Residential Loans, the Developer shall make repayments of the Residential Loans equal to a pro-rata share of fifty percent (50%) of Residual Receipts, if any; provided however, that in the event there is a Tranche C Loan, then the Residential Loans repayment shall equal a pro-rata share of ten percent (10%) of Residual Receipts until the Tranche C Loan is repaid, after which the repayment amount will increase to a pro-rata share of fifty percent (50%) of Residual Receipts. The Residential Loans' pro rata share shall be determined based on the Residential Loans' proportionate amount relative to the other Residual Receipts loans provided by other Project public agency lenders. The Developer shall provide 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. Payments made shall be credited first against accrued interest and then against outstanding principal.

(c) Payment in Full. Subject to the provisions of subsection (d) below, all principal and interest, if any, on the Residential Loans 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 10 below; (2) the occurrence of an Event of Default for which the City exercises its right to cause the Residential 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 Residential Loans at any time.

Section 4.7 Repayment Schedule for the Garage Loan.

The Garage Loan shall be repaid as follows:

(a) Term. The Garage Loan shall have a term that expires on the date fifty-seven (57) years from the Closing Date.

(b) Payment in full. Subject to the provisions of subsection (c) below, all principal and interest, if any, on the Garage Loan shall 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 10 below; (2) the occurrence of an Event of Default for which the City exercises its right to cause the Garage Loan indebtedness to become immediately due and payable; or (3) the expiration of the Term specified in (a) above.

(c) Prepayment. The Developer shall have the right to prepay the Garage Loan at any time.

Section 4.8 Reports and Accounting of Residual Receipts.

(a) Audited Financial Statement. In connection with the annual repayment of the Residential Loans, the Developer shall furnish to the City an audited statement duly certified by an independent firm of certified public accountants approved by the City, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding fiscal year.

(b) Books and Records. The Developer shall keep and maintain full, complete and appropriate books, record and accounts relating to the Residential 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.

Section 4.9 Developer Fee.

The amount and the terms of the City Loans, as provided in this ARTICLE 4, have been established by taking into account the anticipated costs of development, including allowing for the maximum Developer Fee permitted by the program regulations for Tax Credits and the potential for a deferral of Developer Fee, to be paid for development and construction management services, in amounts determined in accordance with the program regulations in effect at the time the Developer receives an allocation of Tax Credits. The amount of the Developer Fee and any deferred Developer Fee shall be set forth in the Financing Plan to be approved by the City.

Section 4.10 Assumption.

Subject to Section 10.4 and Section 10.5 below, 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 not be delayed, unreasonably conditioned, or withheld.

Section 4.11 Non-Recourse.

Following recordation of the Leasehold 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 City Loans or the performance of the covenants of the Developer under the Leasehold Deed of Trust. The sole recourse of the City with respect to the principal of, or interest on, the Promissory Notes and defaults by the Developer in the performance of its covenants under the Leasehold Deed of Trust shall be to the property described in the Leasehold Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall: (a) limit or impair the enforcement against all such security for the Promissory Note of all the rights and remedies of the City thereunder; or (b) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Promissory Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

ARTICLE 5.
PREDISPOSITION REQUIREMENTS

Section 5.1 Conditions Precedent to Conveyance of Property.

The requirements set forth in this Article are conditions precedent to the City's obligations to lease the Residential Property to the Developer and to providing the Developer access to the Garage Property through the Garage License Agreement and Garage Easement Agreement. The City's obligation to lease the Residential Property to the Developer and enter the Garage License Agreement and Garage Easement Agreement shall be subject to the satisfaction of all such conditions precedent by the dates set forth in the Schedule of Performance, unless otherwise waived by the City.

Section 5.2 Government Approvals.

(a) No later than the dates set forth in the Schedule of Performance, the Developer shall obtain all discretionary governmental approvals necessary for development and operation of the Improvements. The City shall cooperate with the Developer on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals.

(b) No later than the date set forth in the Schedule of Performance, the Developer shall obtain, with the reasonable cooperation of the City, all approvals from the City required for the issuance of a building permit. Notwithstanding the foregoing, the date set forth in the Schedule of Performance shall be subject to two one (1) year extensions at the written request of the Developer for approval by the City Manager for a total extension period of two (2) years. Such extensions shall not be unreasonably conditioned, delayed or withheld.

(c) The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required or additional permits, applications, or allocations, if any, and in no way limits the discretion of the City in the permit allocation and approval process.

Section 5.3 Construction Plans.

(a) The City Manager's office will review Construction Plans for the Residential Improvements and for the Garage Improvements concurrently with the Building Permit process. While separate review and approval process is not required, no building permit will not be issued until any concerns of the City Manager's office have been resolved.

Section 5.4 Financing Plan.

(a) The Developer intends to finance the development with sources that may include but are not limited to the City Loans, Tax Credit Funds, and other public financing and private lender construction and permanent financing. As of the Effective Date, the City has approved the preliminary Financing Proposal attached to this Agreement as Exhibit D. The City and the Developer acknowledge that the Developer may pursue additional funding options and the list of funding sources described above is not intended to be a limitation on the sources that the Developer may utilize to finance the construction and operation of the Development. The Financing Proposal shall be in effect until a Financing Plan is approved by the City pursuant to subsection (c) below. The City shall approve updates to the Financing Proposal and the Financing Plan and any amendments thereto, provided any such alternate funding options are reasonable, and the Developer and the City agree to replace the Initial Financing Proposal with the approved Financing Plan for the Development, which shall meet the requirements of subsection (b) below.

(b) By the time specified in the Schedule of Performance, the Developer shall have submitted for City review a Financing Plan containing the following: (1) a "sources and uses" breakdown of the costs of constructing the Improvements, and (2) an operating proforma for the Residential Development. Such sources and uses breakdown and operating proforma shall reflect the Developer's then current expectations for funding sources, development costs, and Annual Operating Expenses. The purpose of the City review shall be to: (1) determine whether the Developer's estimates of costs and net operating income indicate that the construction and operation of the Residential Improvements will be done in accordance with this Agreement and the proposed Ground Lease, and (2) determine whether the Developer's estimates of costs indicate that the construction of the Garage Improvements will be done in accordance with this Agreement and the proposed Garage License Agreement. Notwithstanding the foregoing, the date set forth in the Schedule of Performance shall be subject to two one (1) year extensions at the written request of the Developer for approval by the City Manager for a total extension period of two (2) years. Such extensions shall not be unreasonably conditioned, delayed or withheld.

(c) Upon receipt by the City of the proposed Financing Plan, the City shall promptly review the Financing Plan and shall approve or disapprove it within fifteen (15) working days after submission if it conforms to the provisions of this Agreement. If the City does not respond within fifteen (15) days following the City's receipt of the complete Financing

Plan either approving or disapproving the Financing Plan it shall be deemed approved. The City's review of the Financing Plan shall be limited to determining if the contemplated financing will be reasonably available, if the financing contemplated in the Financing Plan would provide sufficient funds to undertake and complete the development and construction of the Improvements and determining if it is consistent with the terms of this Agreement.

(d) If the Financing Plan is not approved by the City, the City shall notify the Developer in writing of the reasons therefor. The Developer shall thereafter resubmit a revised Financing Plan to the City for its approval within fifteen (15) days after the City's notification of disapproval. The City will either approve or disapprove the revised Financing Plan within fifteen (15) days after resubmission by the Developer.

Section 5.5 Other Approved Financing.

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

(b) In the event after making a good faith effort, Developer is unable to obtain financing mutually acceptable to the Developer and the City by the time set forth in the Schedule of Performance, either Party may terminate this Agreement by providing written notice to the other Party and thereafter neither Party shall have any rights against or liability to the other under this Agreement.

Section 5.6 HUD Requirements.

The City agrees that if the Developer obtains financing subject to an FHA insurance program of HUD, the City shall modify the City Documents to conform to HUD requirements, including, but not limited to, provisions to reflect that in the event of any conflict between the City Documents and the HUD Documents that the HUD Documents shall prevail, and to provide that the City shall not exercise any of its remedies contained in the City Documents without the prior written approval of HUD.

Section 5.7 Tenant Selection. By the time specified in the Schedule of Performance, Developer shall provide the City, for its review and approval, which approval will not be unreasonably conditioned, withheld or delayed, with Developer's written tenant selection plan and a marketing plan for marketing the Project to income-eligible households as required

pursuant to this Agreement, including information on affirmative marketing efforts and compliance with fair housing laws

ARTICLE 6.
LEASE OF PROPERTY AND EXECUTION OF LICENSE AGREEMENT AND
GARAGE EASEMENT AGREEMENT

Section 6.1 Lease, Garage License Agreement and Garage Easement Agreement.

Provided the pre-disposition requirements set forth in ARTICLE 5 and the additional closing conditions set forth in Section 6.4 have been satisfied, the City shall lease to the Developer the Residential Property and provide the Developer access to the Garage Property pursuant to the terms, covenants, and conditions of this Agreement, the Ground Lease, the Garage License Agreement and Garage Easement Agreement. If the parties are unable to negotiate the terms of a Ground Lease, Regulatory Agreement, Garage License Agreement, and Garage Easement Agreement, this Agreement may be terminated as set forth in Section 11.2 below. Notwithstanding anything to the contrary contained herein, upon execution of the Ground Lease and the Garage License Agreement, then to the extent the terms of this Agreement are in conflict with the terms of the Ground Lease and/or the Garage License Agreement, the requirements of the Ground Lease and/or the Garage License Agreement will prevail.

Section 6.2 Form of Ground Lease, License Agreement and Easement Agreement.

The City and the Developer agree that the Ground Lease, Garage License Agreement, and Garage Easement Agreement to be executed by the Parties will be substantially consistent with the terms of the form of Ground Lease, Garage License Agreement, and Garage Easement Agreement, attached hereto as Exhibit E, Exhibit F and Exhibit G respectively (as such may be further negotiated).

Section 6.3 Opening Escrow.

The Parties shall establish the Escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, which instructions shall be consistent with this Agreement. Upon request by the Developer, the Title Company may be changed to a company requested by the Developer, provided: (a) the Developer makes the request prior to the opening of Escrow; (b) the new title company is approved by the City.

Section 6.4 Closing.

The Closing Date shall occur within thirty (30) days following the date on which all conditions precedent to conveyance set forth in ARTICLE 5 have been satisfied or waived by the City. In addition to the conditions precedent to execution of the Ground Lease as set forth in ARTICLE 5 (including but not limited to the closing of the financing set forth in the approved Financing Plan), the following conditions shall be satisfied or waived prior to or concurrently with, and as conditions of, execution of the Ground Lease:

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

(b) The Developer shall have furnished the City with evidence of the insurance coverage meeting the general insurance requirements set forth in ARTICLE 9.

(c) The Developer shall have executed and delivered to the City the City Documents, and any other documents and instruments required to be executed and delivered, all in a form and substance satisfactory to the City.

(d) The Memorandum of Disposition Agreement, the Memorandum of Ground Lease, the Leasehold Deed of Trust, and the Regulatory Agreement, shall have been recorded against the Developer's interest in the Property as a lien subject only to the exceptions authorized by the City.

(e) City has approved the final Financing Plan in accordance with Section 5.4.

(f) The Developer shall have obtained approval by the City of San Mateo of the Developer's complete Construction Plans for Development sufficient to obtain the required building permit from the City as evidenced by the City's issuance of a permit-ready letter.

(g) There shall exist no Event of Default under this Agreement.

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

Notwithstanding the foregoing, the Closing Date for the Residential Property may be different from the Closing Date for the Garage Property.

Section 6.5 Condition of Title.

On the Closing Date, the Developer shall have an insurable leasehold interest to the Residential Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

(a) Applicable building and zoning laws and regulations;

(b) The provisions of the Ground Lease;

(c) The provisions of the Regulatory Agreement;

(d) Any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Memorandum of the Ground Lease;

(e) The liens of any loan approved by the City in the Financing Plan; and

(f) Permitted exceptions reasonably acceptable to the Developer.

Section 6.6 Condition of Property.

(a) In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), the City represents and warrants that it has no further knowledge, and no reasonable cause to believe, that any hazardous materials are located on or beneath the Property, except as disclosed in the Phase I Environmental Site Assessment for 480 East 4th Avenue dated July 31, 2018, the Phase I Environmental Site Assessment for 400 East 5th Avenue dated July 31, 2018, and the Limited Phase II Subsurface Investigation for 480 East 4th Avenue and 400 East 5th Avenue dated November 29, 2018, all prepared by AEI Consultants, in addition to the Environmental Site Characterization for 400 East Fifth Avenue and 480 East Fourth Avenue dated for February 6, 2020 and prepared by Langan Engineering and Environmental Services, Inc.

(b) The physical condition, possession or title of the Residential Property shall be delivered from the City to the Developer in an as is condition, with no warranty expressed or implied by the City, including without limitation, the presence of hazardous materials or condition of the soil, its geology, the presence of known or unknown faults, or the suitability of the Residential Parcel for the Residential Development. Notwithstanding the previous sentence, the Developer shall be indemnified by the City from liability due to any environmental issues not identified in the Phase I Environmental Site Assessment for 480 East 4th Avenue dated July 31, 2018, the Phase I Environmental Site Assessment for 400 East 5th Avenue dated July 31, 2018, and the Limited Phase II Subsurface Investigation for 480 East 4th Avenue and 400 East 5th Avenue dated November 29, 2018, all prepared by AEI Consultants, in addition to the Environmental Site Characterization for 400 East Fifth Avenue and 480 East Fourth Avenue dated for February 6, 2020 and prepared by Langan Engineering and Environmental Services, Inc. For the purposes of clarification only, and to limit the Developer's indemnity required herein, the City agrees to indemnify Developer for any liability associated with groundwater contamination at or under the Site that first existed on the Site prior to the Closing Date; City further agrees to indemnify Developer from liability due to any environmental issue that arises independent from the purpose of this Agreement.

- (1) In the event that an unknown source of Hazardous Materials is discovered after the execution of this Agreement and the remediation of such Hazardous Materials is required as a result of the purposes of this Agreement, the City agrees to cover all further remediation costs for the Property up to Five Hundred Thousand Dollars (\$500,000). If remediation costs exceed Five Hundred Thousand Dollars (\$500,000) the Developer may, in their sole discretion, elect to pay the additional remediation costs or terminate this Agreement.

(c) The City shall manage and pay for the relocation costs associated with the relocation of the Worker Resource Center tenant which is currently located on the Garage Property.

Section 6.7 Costs of Escrow and Closing.

(a) All ad valorem taxes for the Residential Property, if any, shall be prorated as of the Closing Date. The Developer shall pay the cost of title insurance, document preparation, recordation fees, transfer tax, if any, and any additional recording costs to close the Escrow for the Residential Property.

(b) All ad valorem taxes for the Garage Property, if any, shall be borne by the City. The City shall pay the cost of title insurance, transfer tax, if any for the Garage Property. The City shall pay for Title Company document preparation, recordation fees, and any additional costs to close the Escrow for the Garage Property. The City shall pay the escrow fees of the Title Company for the Garage Property, if any.

ARTICLE 7.
CONSTRUCTION OF IMPROVEMENTS

Section 7.1 Construction Pursuant to Plans.

Unless modified by operation of Section 7.6, the Improvements shall be constructed substantially in accordance with the Development Plan as described in ARTICLE 2 and shown in Exhibit B, incorporated herein by this reference, and the Construction Plans and the terms and conditions of the land use permits and approvals and building permits, including any variances granted for the Development.

Section 7.2 Construction Contracts.

(a) No later than the date set forth in the Schedule of Performance, the Developer shall submit to the City for its limited approval the proposed separate construction contracts for the Residential Improvements and the Garage Improvements. The City's review and approval shall be limited exclusively to a determination whether: (1) the guaranteed maximum construction cost set forth in the relevant construction contract is consistent with the approved Financing Plan; and (2) the construction contract contains provisions consistent with and required by this Agreement and state law, including the requirements of Section 7.8 below.

(b) Upon receipt by the City of a proposed construction contract, the City shall promptly review the same and approve each of the contracts, within ten (10) business days of submission if it satisfies the limited criteria set forth above. If the submitted construction contract is not approved by the City, the City shall set forth in writing and notify the Developer of the City's reasons for withholding such approval. The Developer shall thereafter submit a revised construction contract for City approval, which approval shall be granted or denied in five (5) business days in accordance with the criteria and procedures set forth above. Any construction contract executed by the Developer for the Residential Improvements or the Garage Improvements shall be in the form approved by the City. If the City fails to approve or disapprove the forms of construction contract within the five (5) business day review period, the form of construction contract shall be deemed approved by the City.

Section 7.3 Construction Bonds.

No later than the date set forth in the Schedule of Performance, the Developer shall obtain one (1) labor and material bond and one (1) performance bond for construction of each of the Residential Improvements and the Garage Improvements, each in an amount equal to one hundred percent (100%) of the scheduled cost of construction under each construction contract. Each bond shall name the City as co-obligee and shall be issued by a reputable insurance company licensed to do business in California, reasonably acceptable to the City. The form of the labor and material bonds and the performance bonds shall be subject to the City's prior review and written approval, which shall not be unreasonably withheld or delayed.

Section 7.4 Commencement of Improvements.

The Developer shall commence construction of the Improvements no later than the date set forth in the Schedule of Performance.

Section 7.5 Completion of the Improvements.

The Developer shall diligently prosecute to completion the construction of the Improvements no later than the date set forth in the Schedule of Performance.

Section 7.6 Change in Construction of Improvements.

(a) If the Developer desires to make any material change in the Improvements which are not substantially consistent with the Construction Plans for either the Residential Development or the Garage Development, the Developer shall submit the proposed change to the City for its approval. No change which is required for compliance with building codes or other government health and safety regulations shall be deemed material. If the Improvements, as modified by any such proposed change, do not materially alter the approved planning application and will conform to the requirements of this Agreement, and the Construction Plans, the City Manager or their designate shall approve the change by notifying the Developer in writing within ten (10) business days. For purposes of this Section, a material change shall mean any change which is expected to substantially alter the external appearance of either the Residential Development or the Garage Development (including any color change) or which is expected to result in an individual change of One Hundred Thousand Dollars (\$100,000) or a cumulative change of Two Hundred and Fifty Thousand Dollars (\$250,000), or more, in the cost of construction of either the Residential Improvements or Garage Improvements individually.

(b) Unless a proposed change is rejected by the City within ten (10) working days, it shall be deemed approved. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect. If the City rejects a proposed change, it shall provide the Developer with the specific reasons therefore.

(c) The approval of changes in the Construction Plans by the City pursuant to this Section shall be in addition to any approvals required to be obtained from the City pursuant to building permit requirements. Approval of changes in the Construction Plans by the City shall not constitute approval by the City and shall in no way limit the City's discretion in approving changes to the Construction Plans.

Section 7.7 Certificate of Completion; Expiration of Garage License Agreement; Recordation of Garage Easement Agreement.

(a) Residential Improvements. Within thirty (30) days after completion of the construction of the Residential Improvements, in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Residential Improvements (including the dates for beginning and completing construction of the Improvements), as set forth below, the City shall provide an instrument so certifying the completion of the construction of the Residential Improvements (the "Residential Improvements Certificate of Completion"). The Residential Improvements Certificate of Completion shall be a conclusive determination that the covenants in this Agreement with respect to the obligations of the Developer to construct the Residential Improvements have been met. The certification shall be in such form as will enable such certificate to be recorded in the Official Records. These certifications and determinations shall not constitute satisfaction of any obligation of the Developer to any holder of a Security Financing Interest, shall not be deemed a notice of completion under the California Civil Code, nor a certificate of occupancy and shall neither hinder nor convey any rights to occupy any portion of the Improvements.

(b) Garage Improvements. Within thirty (30) days after completion of the construction of the Garage Improvements, in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Garage Improvements (including the dates for beginning and completing construction of the Garage Improvements), the City shall provide an instrument so certifying the completion of the construction of the Garage Improvements (the "Garage Improvements Certificate of Completion"). Concurrently with the issuance of the Garage Improvements Certificate of Completion the Garage License Agreement shall terminate, and the issuance of the Garage Improvements Certificate of Completion shall serve to demonstrate acceptance by the City of the Garage Improvements "as is". The Garage Improvements Certificate of Completion shall be a conclusive determination that the covenants in this Agreement with respect to the obligations of the Developer to construct the Garage Improvements have been met. In conjunction with the issuance of the Garage Improvements Certificate of Completion, the Developer shall deliver to the City: (1) a complete set of "as built" drawings of the Garage Improvements (in a form mutually acceptable to the Parties); (2) all manufacturers' warranties, manuals, and other documentation, within the possession of the Developer or the general contractor, necessary for the City's use and occupancy of the Garage Improvements; and (3) any other documents reasonably required by the City's standard process and protocol for the acceptance of public improvements (if any). Notwithstanding anything to the contrary contained herein, City shall have no claim against the Developer arising out of or related to the Garage Improvements that have been accepted pursuant to this Section, and releases the Developer from any and all responsibility or liability whatsoever arising out of, relating to or connected to the Garage Improvements after the date of issuance of the Garage Improvements Certificate of Completion (whether arising before or after such date); provided, however, that the City shall retain the right to recourse against any security or warranties assigned to City under terms and conditions set forth herein. In addition, upon issuance of the Garage Improvements Certificate of Completion, City shall indemnify and defend the Developer its officers, directors, employees, agents, related and affiliated entities, lenders and investors (all of the foregoing, collectively, the "Developer Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation reasonable attorneys' fees and costs of

litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “Claims”), including without limitation, Claims relating to property damage, personal injury, or death, to the extent arising out of, resulting from or connected with City’s operation, use, security, safety, maintenance, repair, replacement, reconstruction, or removal of the Garage Improvements, except to the extent arising from: (i) the Developer’s use of the Garage Improvements pursuant to the Garage Easement Agreement; and (ii) the gross negligence or willful misconduct of the Developer Indemnitees. 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.

(c) Recordation of Garage Easement Agreement. On the Closing Date, the Developer and the City shall execute and record the Garage Easement Agreement, to provide for the conveyance of an appurtenant easement for no less than 164 residential parking spaces on the Garage Property to the Residential Property from the City for the term of the Ground Lease, commencing immediately following issuance by the City of the Garage Improvements Certificate of Completion. Upon execution and recordation of the Garage Easement Agreement, the Developer shall receive an insurable interest in the Garage Property, free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession (other than Developer’s rights under the Garage License Agreement). The Parties agree and acknowledge that the execution and recordation of the Garage Easement Agreement shall in no way terminate or otherwise limit the City’s obligation for the repair and maintenance of the Garage Property, except as otherwise provided for under the Garage Easement Agreement and/or the Garage Maintenance Agreement for the term of the Ground Lease. Notwithstanding the foregoing, City and Developer hereby acknowledge and agree that the dedication of the Garage Easement Agreement may be structured differently if required by Project funding sources or if the City and Developer mutually agree to do so in their reasonable discretion. In such an event, if requested, City and Developer shall amend this Agreement and any related required City Documents to reflect the change in structure.

(d) Execution of Garage Maintenance Agreement. On the Closing Date, the Developer and the City shall execute the Garage Maintenance Agreement. The Garage Maintenance Agreement shall, amongst other things, establish the terms upon which the Garage Improvements, once completed and in operation, shall be maintained and the allocation of operating and maintenance costs between the City and Developer.

Section 7.8 Compliance with Applicable Law; Prevailing Wage Requirement.

(a) The Developer shall cause all construction to be performed in compliance with:

- (1) All applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter.
- (2) All directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work

shall proceed only after the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Property.

(b) The Developer shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). In addition, as applicable, the Developer shall cause its respective contractors and subcontractors in the construction of the Development to do all the following: (1) all calls for bids, bidding materials and the construction contract documents for the Development must specify that (A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Development unless registered with the DIR pursuant to Labor Code Section 1725.5, and (B) the Development is subject to compliance monitoring and enforcement by the DIR; (2) the Developer is required to provide the City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>); (3) the Developer shall cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; or (4) the Developer shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages in accordance with the terms of this Agreement as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development. The requirements in this Subsection survive the repayment of the City Loans, the reconveyance of the Leasehold Deed of Trust, and the expiration of the Garage License Agreement.

(c) The Developer shall defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer, its contractor and subcontractors) to pay prevailing wages in accordance with this Agreement as determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations or comply with the other applicable provisions of Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the Department of Industrial Relations in connection with the construction, pursuant to this Agreement, of the Development, in regards to the Garage Property only for actions taken prior to the expiration of the Garage License Agreement, and shall indemnify and hold the City harmless against any damages, compensation, fines, penalties or other amounts resulting from the successful prosecution of such claim.

(d) The Developer shall construct the Development to comply with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act, Section 504 of the Construction Act of 1973, Title II and/or Title III of the Americans with Disabilities Act of 1990, Title 24 of the California Code of Regulations and the Uniform Federal Accessibility Standards. In compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.), a minimum of twenty-three (23) units in the Development shall be constructed to be readily accessible and usable by households with a mobility impaired member and a minimum of nine (9) units shall be constructed and to be readily accessible and usable by households with a hearing or visually impaired member.

Section 7.9 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or the Improvements or a stop notice affecting the City Loans is served on the City or any other lender or other third party in connection with the Development, then the Developer shall, within thirty (30) days after such filing or service, either pay or fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety acceptable to the City in sufficient form and amount, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(b) If the Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Developer's expense. Alternatively, the City may require the Developer to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.

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

Section 7.10 Equal Opportunity.

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

Section 7.11 Inspections.

The Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the City and by public authorities during reasonable business hours upon forty-eight (48) hours' written notice for the purposes of determining compliance with this Agreement.

Section 7.12 Information.

The Developer shall provide any information reasonably requested by the City in connection with the Development.

Section 7.13 Records.

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

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

ARTICLE 8.
ONGOING DEVELOPER OBLIGATIONS

Section 8.1 Applicability.

The conditions and obligations set forth in this ARTICLE 8 shall apply from the date Developer obtains a leasehold interest in the Residential Property and throughout the Term, unless a different period of applicability is specified for a particular condition or obligation.

Section 8.2 Use.

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

(b) The Regulatory Agreement shall require that a portion of the Units shall be affordable to and occupied by low income households as that term is defined in the Regulatory Agreement.

Section 8.3 Maintenance.

(a) The Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, of the Residential Development in condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in accordance with a management plan, as the same may be amended from time to time, and all

applicable laws, rules, ordinances, orders, and regulations of all federal, state, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

(b) In the event that the Developer breaches any of the covenants contained in this section and such default continues for a period of fifteen (15) 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 Residential 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 Residential Property and perform all acts and work necessary to protect, maintain, and preserve the Residential Improvements and landscaped areas on the Residential Property, and to attach a lien on the Residential Property, or to assess the Residential 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 8.4 Taxes, Assessments and Development Impact Fees.

(a) 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 Residential Property or the Developer's leasehold interest in the Residential 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.

(b) The Developer will pay those City impact fees that are determined to apply to this project. In accordance with Government Code Section 66007, the fees will be due to the City at the time of issuance of a certificate of occupancy or the date of final inspection, whichever occurs first.

Section 8.5 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 Closing Date, the Developer shall not cause or permit the Residential Property or the Residential 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, except to the extent such Hazardous Materials were present on or about the Site prior to the Closing Date. The Developer hereby represents and warrants to the City that, at all times from and after the Closing Date until the expiration of the Garage License Agreement, the Developer shall not cause or permit the Garage Property or the Garage 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, except to the extent such Hazardous Materials were present on or about the Site prior to the Closing Date.

- (2) Hazardous Materials Laws. The Developer hereby represents and warrants to the City that, at all times from and after the Closing Date, the Developer shall comply and cause the Residential Property, and the Residential Improvements thereon to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions. The Developer hereby represents and warrants to the City that, at all times from and after the Closing Date until the expiration of the Garage License Agreement, the Developer shall be in material compliance with and cause the Garage Property, and the Garage Improvements thereon to be in material compliance with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions. Upon notice from the City to Developer that Developer, the Residential Property or Residential Improvements are not in compliance with Hazardous Material Laws, Developer shall be given a reasonable period to cure, and not less than thirty (30) days, given the nature, context, and practicability of curing the material non-compliance.
- (3) Notices. The Developer hereby represents and warrants to the City that, at all times from and after the Closing Date, the Developer shall immediately notify the City in writing of: (i) the discovery of any Hazardous Materials on or under the Property, not previously disclosed by City; (ii) any knowledge by the Developer that the Property does not comply with any Hazardous Materials Laws; and (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, or arising from claims of nuisance, or damage to property or personal injury relating to Hazardous Materials associated with the Property or the Improvements thereon (collectively "Hazardous Materials Claims"). 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 for any claims or actions arising from activities related to Hazardous Materials on the Property occurring after the Closing Date, except as otherwise provided by this Agreement.

(4) Remedial Action.

The City, in its role as landowner, will fully and completely cooperate with Developer in Developer's obligation, consistent with this Agreement, to remediate the Property for the Property's reasonably anticipated use. Such cooperation on the part of the City shall include: execution of an agency oversight agreement (Oversight Agreement) with the Department of Toxic Substances Control (DTSC), providing for the DTSC's jurisdiction over the Property's environmental remediation; authorizing Developer to submit required remediation related documents to DTSC (e.g., remedial action workplan, completion reports); assigning or transferring such Oversight Agreement to Developer upon Developer's request conditioned only upon approval by DTSC of such transfer; providing notifications to environmental agencies, as landowner, as may be required; executing, to the extent necessary, environmental land use covenants, and signing, as landowner, brownfields grant applications and reimbursing developer out of any grant funds received for reimbursable remediation costs incurred by Developer. Developer will be responsible for covering the cost of the remediation based on the Condition of the Property as provided to DTSC at the time of this Agreement and described in Section 6.6. Except for obligations elsewhere established under this Agreement, the City shall bear only de minimis costs as a result of this provision.

Except as contemplated in the previous paragraph, without the City's prior written consent, which shall not be unreasonably withheld or delayed, 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.

Section 8.6 Residential Property Management Agent.

The Residential 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 Residential Development in a manner that will provide decent, safe, and sanitary housing. For any change in the Residential Property Management Agent, the

Developer shall submit for the City's approval the identity of any proposed Residential Property Management Agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed Residential Property Management Agent as is reasonably necessary for the City to determine whether the proposed Residential Property Management Agent meets the standard for a qualified Residential Property Management Agent set forth above. If the proposed Residential Property Management Agent meets the standard for a qualified Residential Property Management Agent set forth above, the City shall approve the proposed Residential Property Management Agent by notifying the Developer in writing. The City hereby pre-approves MidPen Property Management Corporation, as the initial Residential Property Management Agent.

Section 8.7 Audits.

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

ARTICLE 9.
INSURANCE REQUIREMENTS

Developer will maintain the insurance coverage described below:

Section 9.1 Construction Coverage - Minimum Scope and Limits of Insurance

Developer shall procure and maintain for the duration of the project construction until issuance of certificate of occupancy insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the construction work hereunder by the Developer, its agents, representatives, or employees.

Coverage shall be at least as broad as:

(a) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. The \$5,000,000 per occurrence limit can also be met with an umbrella liability policy in the amount of at least \$5,000,000.

(b) Automobile Liability: Developer shall cause its Contractor to maintain Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$2,000,000 per accident for bodily injury and property damage and Developer's contract with its Contractor will require the Contractor to indemnify the City and name the City as an additional insured.

(c) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

(d) Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

(e) Developer shall cause its Contractor to maintain Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate and Developer's contract with its Contractor will require the Contractor to indemnify the City and name the City as an additional insured on Pollution policy.

(f) Umbrella liability policy: Developer shall cause its Contractor to maintain an umbrella liability policy in the amount of \$10,000,000 and Developer's contract with its Contractor will require the Contractor to indemnify the City and name the City as an additional insured.

(g) If developer maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Section 9.2 Ground Lease Coverage – Minimum Scope and Limits of Insurance

Coverage during the Ground Lease Term shall be at least as broad as:

(a) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(b) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

(c) Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

Section 9.3 Additional Insurance Provisions Applicable to Both Construction Coverage and Ground Lease Coverage

(a) Broader Coverage: If the Developer maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the developer. Any available insurance

proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(b) Self-insured retentions: Self-insured retentions for insurance required herein must be declared to and approved by the City. At the option of the City, either: the developer shall cause the insurer shall to reduce or eliminate such self-insured retentions as respects the City, its elected and appointed officials, employees, and agents; or the developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

(c) Endorsements: The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (1) The City, its elected and appointed officials, employees, and agents are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Developer. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
- (2) For any claims related to this project, the Developer's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the Developer's insurance and shall not contribute with it.
- (3) Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City.

(d) Acceptability of Insurers: Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

(e) Waiver of Subrogation: Developer hereby agrees to waive rights of subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver

of subrogation in favor of the City for all work performed by the Developer, its employees, or agents.

(f) **Verification of Coverage:** Developer shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

ARTICLE 10.
ASSIGNMENT AND TRANSFERS

Section 10.1 Definitions.

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

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

(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;

(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 Residential Property or the Residential Improvements thereon; provided, however, that leasing of the Units included within the Residential Improvements to tenant occupants in accordance with the Regulatory Agreement shall not be deemed a Transfer for purposes of this Article.

Section 10.2 Purpose of Restrictions on Transfer.

(a) This Agreement is entered into solely for the purpose of the 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 Property to the general welfare of the community;

- (2) The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such development possible;
- (3) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for the development of the Property and upon the continuing interest which the Developer will have in the Residential Property to assure the quality of the use, operation and maintenance deemed critical by the City in the development of the Residential Property;
- (4) The fact that a change in ownership or control of the owner of the Residential 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 Residential Property;
- (5) The fact that the Residential Property is not to be acquired or used for speculation, but only for the Residential Development and operation by the Developer of the Residential Development 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 10.3 Prohibited Transfers.

(a) The limitations on Transfers set forth in this Section shall apply until the end of 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 10.4 Permitted Transfers.

(a) Notwithstanding the provisions of Section 10.3, the following Transfers shall be permitted and are hereby approved by the City:

- (1) Any Transfer creating a Security Financing Interest permitted pursuant to the approved Financing Plan;
- (2) 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;
- (3) The leasing of residential units within the Residential Development in accordance with the Regulatory Agreement;
- (4) The granting of easements or permits to facilitate the development of the Property;
- (5) A loan to refinance the financing identified in the approved Financing Plan.

(b) The City hereby approves a Transfer of a limited partnership interest in the Partnership to the Investor, or to an affiliate of the Investor (provided such affiliate provides documentation reasonably acceptable to the City that the affiliate has sufficient financial capability to provide the capital contributions set forth in the Financing Plan) and future transfers of such interest.

(c) The Parties agree and acknowledge that MP Downtown San Mateo, LLC, shall remain the managing general partner of the Partnership throughout the Lease Term. In the event the general partner of the Partnership is removed by the limited partner of the Partnership for cause following default under the Developer's partnership agreement, the City hereby approves the transfer of the general partner interest to a 501(c)(3) tax-exempt nonprofit public benefit corporation that is selected by the limited partner and approved in advance and in writing by the City, which approval shall not be unreasonably withheld;

(d) The City also hereby approves Transfer of the Property or partnership interest from the Developer to a limited liability company or limited partnership, the managing member or partner of which is MP Downtown San Mateo, LLC, MidPen Housing Corporation, or a nonprofit public benefit corporation affiliated with MidPen Housing Corporation or any combination thereof.

Section 10.5 Effectuation of Certain Permitted Transfers.

(a) No Transfer of this Agreement permitted pursuant to Section 10.4 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 10.6 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 ninety (90) days of receipt by the City of Developer's request for approval of a Transfer. In the event the City does not respond either granting or denying the request within ninety (90) days the request shall be deemed approved. 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 11.
DEFAULT AND REMEDIES

Section 11.1 General Applicability.

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

Section 11.2 No Fault of Parties.

(a) The following events constitute a basis for a Party to terminate this Agreement prior to the Closing without the fault of the other:

- (1) The Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to the City's obligation to execute the Ground Lease set forth in ARTICLE 5 by the dates set forth in the Schedule of Performance;

- (2) The City and the Developer, despite good faith and diligent efforts, are unable to execute the Ground Lease by the dates set forth in the Schedule of Performance;

(b) Upon the happening of any of the above-described events, and at the election of either party, the electing party shall first notify the non-electing party in writing of the electing party's intention to terminate this Agreement, giving the non-electing party thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the non-electing party does not then so cure within said thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, and thereafter diligently completes such cure within a reasonable time thereafter but in no event later than ninety (90) days, then this Agreement may be terminated. After termination, neither party shall have any rights against or liability to the other under this Agreement

Section 11.3 Fault of City.

(a) Except as to events constituting a basis for termination under Section 11.2, 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, without good cause, fails to lease the Property to the Developer within the time and in the manner set forth in ARTICLE 6 and the Developer is otherwise entitled by this Agreement to such conveyance; or
- (2) The City fails, prior to the date Developer applies for tax credits, despite good faith efforts, to seek and/or secure approval for the Compensation Agreement pertaining to the Development from taxing entities that are the successors to the former Redevelopment Agency.
- (3) The City, fails to make the City Loans in accordance with Section 3.1 of this Agreement.
- (4) The City breaches any other material provision of this Agreement.

(b) Upon the happening of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the City fails to commence to cure within such forty-five (45) days and thereafter diligently completes such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the Developer shall be afforded the following remedies: (1) terminating in writing this Agreement (provided, however, that those provisions of this Agreement that recite that they survive termination of this Agreement shall all remain in full force and effect), the Ground Lease, the Garage License Agreement and/or Garage

Easement Agreement; and (2) prosecuting an action for specific performance and for damages. However, in the event of the default described in section (a)(2) above, Developer's remedy is limited to City's repayment of Developer's third party pre-development costs incurred prior to applying for tax credits.

Section 11.4 Fault of Developer.

(a) Except as to events constituting a basis for termination under Section 11.2 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 exercise good faith and diligent efforts to satisfy one or more of the conditions precedent to the City's obligation to convey the leasehold interest in the Residential Property to the Developer pursuant to the Ground Lease;
- (2) The Developer refuses to execute the Ground Lease within the time periods and under the terms set forth in ARTICLE 6;
- (3) The Developer constructs or attempts to construct the Improvements in violation of ARTICLE 7;
- (4) A Transfer occurs, either voluntarily or involuntarily, in violation of ARTICLE 10;
- (5) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking its 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, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), 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 (a)(5) 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 (1) to (4), 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 (a)(6) 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 its business; or
- (8) The Developer breaches any other material provision of this Agreement.

(b) Upon the happening of any of the above-described events, the City shall first notify the Developer in writing of its purported breach, failure or act above described, giving the Developer in writing sixty (60) days from receipt of such notice to cure, or, if cure cannot be accomplished within said sixty (60) days, to commence to cure such breach, failure, or act. In the event the Developer fails to cure within said sixty (60) days, or if such breach is of a nature that it cannot be cured within sixty (60) days, Developer fails to commence to cure within said sixty (60) 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) Termination of this Agreement, the Ground Lease, the Garage License Agreement and/or Garage Easement Agreement by written notice to the Developer.
- (2) Prosecuting an action for damages (but specifically excluding lost profits, special damages and consequential damages) or specific performance;
- (3) Any of the remedies specified in this Agreement; and
- (4) Acceleration of the City Loans.

Section 11.5 Right to Cure at Developer's Expense.

The City shall have the right to cure any monetary default by the Developer under a loan secured by the Residential Property or the Residential Improvements 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 five percent (5%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.

Section 11.6 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 11.7 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 in this Agreement 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.

Section 11.8 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

ARTICLE 12.

SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 12.1 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 Residential 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 12.2 Holder Not Obligated to Construct.

The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Ground Lease be construed so to obligate such holder. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to

construct any Improvements thereon, other than those uses of Improvements provided for or authorized by this Agreement.

Section 12.3 Notice of Default and Right to Cure.

Whenever the City pursuant to its rights set forth in ARTICLE 11 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's leasehold interest in the Residential Property or any portion thereof, and the Investor, a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Residential Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such Improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to such Improvements under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon completion and written request made to the City, to a certificate of completion from the City, in a form acceptable by the City.

Section 12.4 Failure of Holder to Complete Improvements.

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

Section 12.5 Right of City to Cure.

In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of Residential Development, and the holder has not exercised its option to complete the Residential Development called for on the Residential Property, the City may cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Residential Property or any portion thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.

Section 12.6 Right of City to Satisfy Other Liens.

After the conveyance of title to the Residential Property or any portion thereof and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Residential 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 Residential Property or any portion thereof to forfeiture or sale.

Section 12.7 Holder to be Notified.

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

ARTICLE 13.
GENERAL PROVISIONS

Section 13.1 Notices, Demands and Communications.

(a) 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
320 W. 20th Avenue
San Mateo, CA 99403
Attn: Drew Corbett, City Manager

Developer: MP Downtown San Mateo Associates, L.P.
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: Matthew O. Franklin

With a copy to:
Gubb & Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan Gross

(b) 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 13.2 Non-Liability of City Officials, Employees and Agents.

No member, official, employee or agent of the City 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.

Section 13.3 Non-Liability of Developer, Employees and Agents.

No member, director, employee or agent of the Developer or the Developer shall be personally liable to 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 or successor or on any obligation under the terms of this Agreement.

Section 13.4 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; delays of any contractor, sub-contractor or supplier; 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. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

Section 13.5 Inspection of Books and Records.

Upon request, the Developer shall permit the City to inspect at reasonable times those books, records and all other documents of the Developer necessary to determine 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 13.6 Provision Not Merged with Lease.

None of the provisions of this Agreement are intended to or shall be merged by any Ground Lease transferring title to any real property which is the subject of this Agreement from City to Developer or any successor in interest, and any such Ground Lease shall not be deemed

to affect or impair the provisions and covenants of this Agreement, prior to the termination hereof.

Section 13.7 Provision Not Merged with Garage License Agreement.

None of the provisions of this Agreement are intended to or shall be merged by any Garage License Agreement providing access to the Garage Property to the Developer for the construction of the Garage Improvements by the Developer, or any successor in interest, which is the subject of this Agreement, and any such Garage License Agreement shall not be deemed to affect or impair the provisions and covenants of this Agreement, prior to the termination hereof.

Section 13.8 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 13.9 General Indemnification.

(a) Except as otherwise provided in this Agreement, the Ground Lease, the Garage License Agreement and/or the Garage Easement Agreement, the Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its elected and appointed officials, employees, and agents, from all suits, actions, claims, causes of action, administrative proceeding, arbitrations, enforcement actions, costs, demands, judgments and liens to the extent arising out of the Developer's performance or non-performance under this Agreement, or any other agreement executed pursuant to this Agreement, or to the extent arising out of acts or omissions of any of the Developer's contractors, subcontractors, or persons claiming under any of the aforesaid, except to the extent directly caused by the City's or its elected and appointed officials, employees, and agents 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.

(b) Except as otherwise provided in this Agreement, the Ground Lease, the Garage License Agreement and/or the Garage Easement Agreement, the City agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Developer) the Developer, its officers and board members, employees, and agents, from all suits, actions, claims, causes of action, administrative proceeding, arbitrations, enforcement actions, costs, demands, judgments and liens to the extent arising out of the City's performance or non-performance under this Agreement, or any other agreement executed pursuant to this Agreement, or to the extent arising out of acts or omissions of any of the City's contractors, subcontractors, or persons claiming under any of the aforesaid, except to the extent directly caused by the Developer's or its officers and board members, employees, and agents 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 13.10 Applicable Law.

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

Section 13.11 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 13.12 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 13.13 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, or where otherwise appropriate, exclusively in the United District Court, Northern District, San Francisco, California.

Section 13.14 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 the Regulatory Agreement shall run with the land and shall bind all successors in title to the Residential Property. 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 Residential 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 Residential Property from the requirements of this Agreement.

Section 13.15 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 13.16 Time of the Essence.

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

Section 13.17 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 Council. Any such action shall be in writing.

Section 13.18 Identity and Authority of Developer.

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

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

(b) Authority of 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.

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

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

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision,

condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or 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.

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

(g) 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.

Section 13.19 Complete Understanding of the Parties.

This Agreement is executed in duplicate originals each of which is deemed to be an original. This Agreement and the attached exhibits constitute the entire understanding and agreement of the parties with respect to the matters set forth in this Agreement.

Section 13.20 Entry by the City.

The Developer shall permit the City, through its officers, agents, or employees, at all reasonable times to enter into the Development (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement, and (b), following completion of construction, to inspect the ongoing operation and management of the Residential 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 13.21 Discretion retained by the City.

The City's execution of this Agreement does not constitute approval by the City and in no way limits the discretion of the City in the permit and approval process in connection with Development of the Improvements.

Section 13.22 Conflict of Interest.

No member, official, employee or agent of the City shall make any decisions relating to this Assignment which affects their personal interests or the interest of any corporation, partnership, association in which they are directly or indirectly interested in.

Section 13.23 No Third-Party Beneficiaries.

No person or entity other than the City, the City or the Developer and their permitted successors and assigns shall have the right of action under this Agreement.

Section 13.24 Amendments.

The Parties can amend this Agreement only by means of a writing executed by all Parties.

Section 13.25 Implementation Agreements.

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. Operating memoranda or implementation agreements may be executed on the City's behalf by the Executive Director, or the Executive Director's designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Notwithstanding the foregoing, nothing in this Section shall be deemed to require the City to consider any request by the Developer for a waiver of any particular obligation as set forth herein.

Section 13.26 Multiple Originals; Counterparts.

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

Section 13.27 Mediation.

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation with thirty days (30) days of a request, and such mediation shall be limited to one (1) day of mediation. The mediator shall be agreed to by the mediating parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation (other than attorneys' fees of each party) shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith

attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties, but not more than sixty (60) days from when such process is commenced, unless the maximum time is extended by mutual written agreement executed by both parties.

Section 13.28 Litigation.

Developer may at the reasonable request testify at City's request, if litigation is brought against City in connection with this Agreement, to the extent the Developer is considered a material witness to the action being litigated. Unless the action is brought by Developer, or is based upon Developer's wrongdoing, City shall compensate Developer for preparation for all reasonable attorneys' fees, and for preparation of testimony and travel at Developer's standard hourly rates at the time of actual testimony.

Section 13.29 Minimum Wages

Developer shall comply with the City of San Mateo local minimum wage requirements as set forth in San Mateo Municipal Code Chapter 5.92.

[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 Downtown San Mateo Associates, L.P., a California limited partnership

By: MP Downtown San Mateo, LLC, a California limited liability company, its General Partner

By: Mid-Peninsula Baker Park, Inc., a California nonprofit public benefit corporation, its Manager

By: _____
Jan M. Lindenthal, Assistant Secretary

CITY:

CITY OF SAN MATEO, a California charter city

By: _____
Drew Corbett, City Manager

Approved to as form and legality

Gabrielle Whelan, Assistant City Attorney

EXHIBIT A-1

LEGAL DESCRIPTION OF THE PROPERTY

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

Parcel One:

Parcel 1 as shown on Parcel Map No. 356, filed September 25, 1997, Book 70, of Parcel Maps, Pages 3 and 4, San Mateo County Records.

APN: 033-281-140

JPN: 033-028-281-12.01

Parcel Two:

All of Block 15, as shown on Parcel Map No. 324, filed in the Office of the County Recorder of San Mateo County, State of California, on February 7, 1991 in Book 64 of Parcel Maps at Page(s) 52 and 53.

APN: 034-183-060

JPN: 034-018-183-01A

034-018-183-02A

034-018-183-05A

EXHIBIT A-2

LEGAL DESCRIPTION OF AIRSPACE ABOVE ADJACENT PUBLIC STREET

The final height, width, and location of the pedestrian bridge may change by no more than five (5) feet when the construction drawings are prepared.

PART I

THREE-DIMENSIONAL PEDESTRIAN BRIDGE OVERCROSSING EASEMENT

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

Being a portion of East 5th Avenue, a City street 60 feet wide, between Railroad Avenue and South Claremont Street, as shown on that certain Parcel Map, entitled Parcel Map No. 324, recorded in Book 64 of Parcel Maps, at Pages 52 and 53, official records of San Mateo County, more particularly described as follows:

COMMENCING at the Easterly most corner of Block 15 of the Town of San Mateo, as said block is shown on the above-referenced Parcel Map, said corner being also the intersection of the Southwesterly sideline of South Claremont Street and the Northwesterly sideline of East 5th Avenue;

Thence leaving said Easterly most corner, and along said Northwesterly sideline, South 48°30'30" West, 139.50 feet to the **TRUE POINT OF BEGINNING**, called Point #1 for the purposes of this description;

Thence leaving Point #1 and said Northwesterly sideline, South 41°29'30" East, 60.00 feet to Point #2 at the Southeasterly sideline of East 5th Avenue;

Thence along said Southeasterly sideline, South 48°30'30" West, 14.50 feet, to Point #3;

Thence leaving said sideline, North 41°29'30" West, 60.00 feet to Point #4 on said Northwesterly sideline of E. 5th Avenue;

Thence along said sideline, North 48°30'30" East, 14.50 feet to said Point #1 and the **TRUE POINT OF BEGINNING** of this description.

Containing an area of 870 square feet, more or less, and being a three dimensional easement 14.29 feet high, for which the base elevation at Point #1 and Point #4 is 160.77 feet, and the base elevation at Point #2 and Point #3 is 165.50 feet.

The benchmark used to establish these elevations is San Mateo City Benchmark No. 033-004, a ram set nail and waster set in the top of curb at the Northeasterly of the intersection of B Street and 5th Avenue, City of San Mateo: Elevation = 125.28 feet (San Mateo datum + 100 feet).

As shown on PART II attached hereto and made a part hereof.

This legal description was prepared by me or under my direct supervision in conformance with the requirements of the Professional Land Surveyors Act.



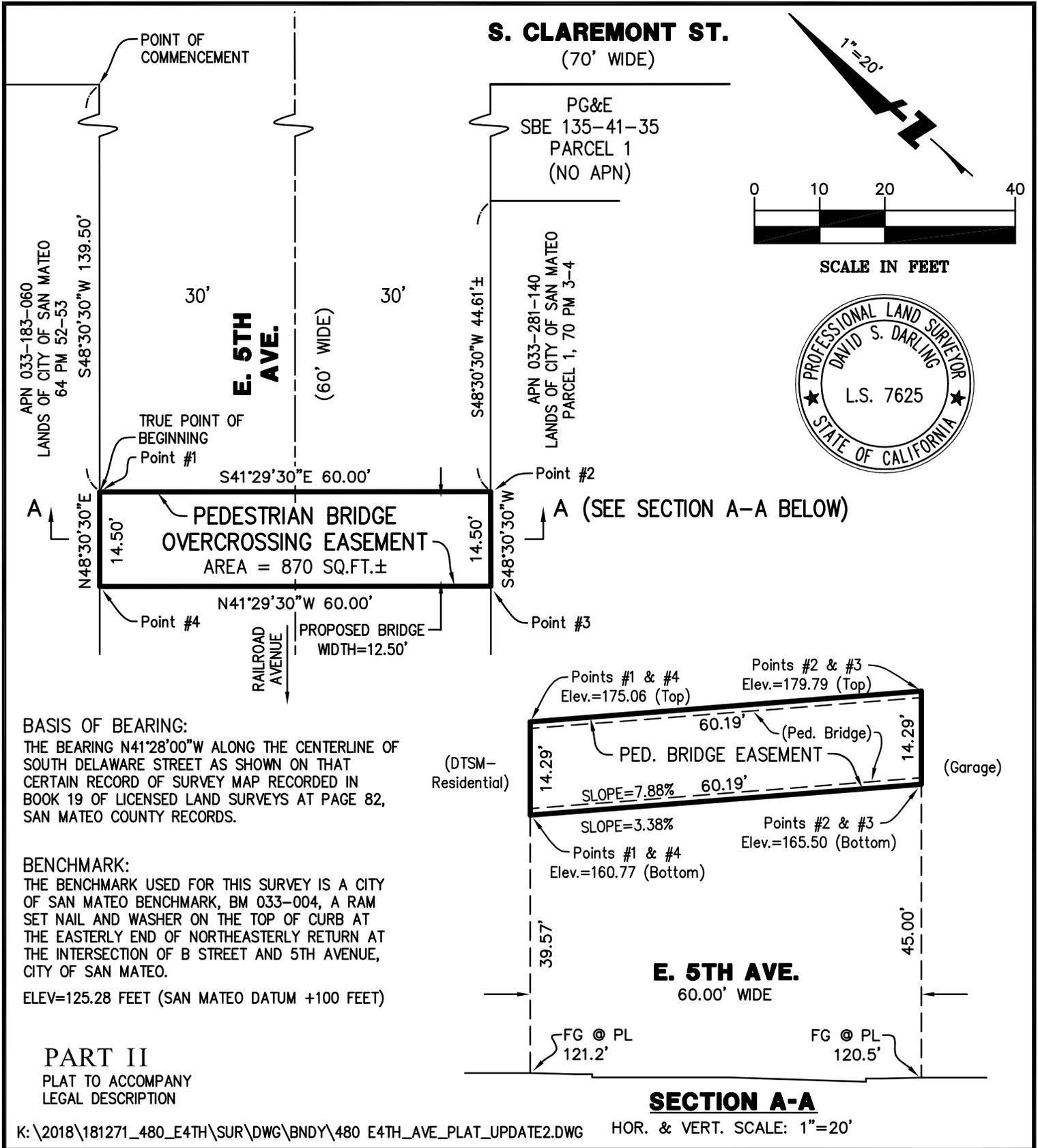
David Darling, L.S. 7625

BKF Engineers

7-17-2020

Dated





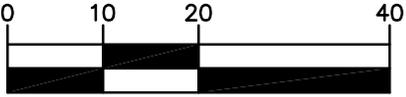
S. CLAREMONT ST.
(70' WIDE)

APN 033-183-060
LANDS OF CITY OF SAN MATEO
64 PM 52-53

E. 5TH AVE.
(60' WIDE)

PG&E
SBE 135-41-35
PARCEL 1
(NO APN)

APN 033-281-140
LANDS OF CITY OF SAN MATEO
PARCEL 1, 70 PM 3-4



SCALE IN FEET

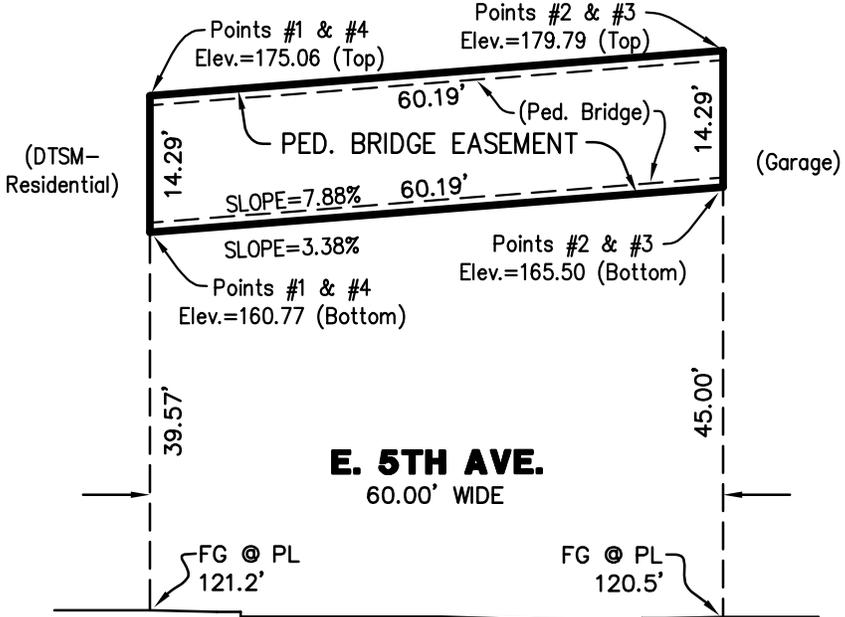
**PEDESTRIAN BRIDGE
OVERCROSSING EASEMENT**
AREA = 870 SQ.FT.±

A (SEE SECTION A-A BELOW)

PROPOSED BRIDGE
WIDTH=12.50'

BASIS OF BEARING:
THE BEARING N41°28'00"W ALONG THE CENTERLINE OF SOUTH DELAWARE STREET AS SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP RECORDED IN BOOK 19 OF LICENSED LAND SURVEYS AT PAGE 82, SAN MATEO COUNTY RECORDS.

BENCHMARK:
THE BENCHMARK USED FOR THIS SURVEY IS A CITY OF SAN MATEO BENCHMARK, BM 033-004, A RAM SET NAIL AND WASHER ON THE TOP OF CURB AT THE EASTERLY END OF NORTHEASTERLY RETURN AT THE INTERSECTION OF B STREET AND 5TH AVENUE, CITY OF SAN MATEO.
ELEV=125.28 FEET (SAN MATEO DATUM +100 FEET)



E. 5TH AVE.
60.00' WIDE

SECTION A-A

PART II
PLAT TO ACCOMPANY
LEGAL DESCRIPTION

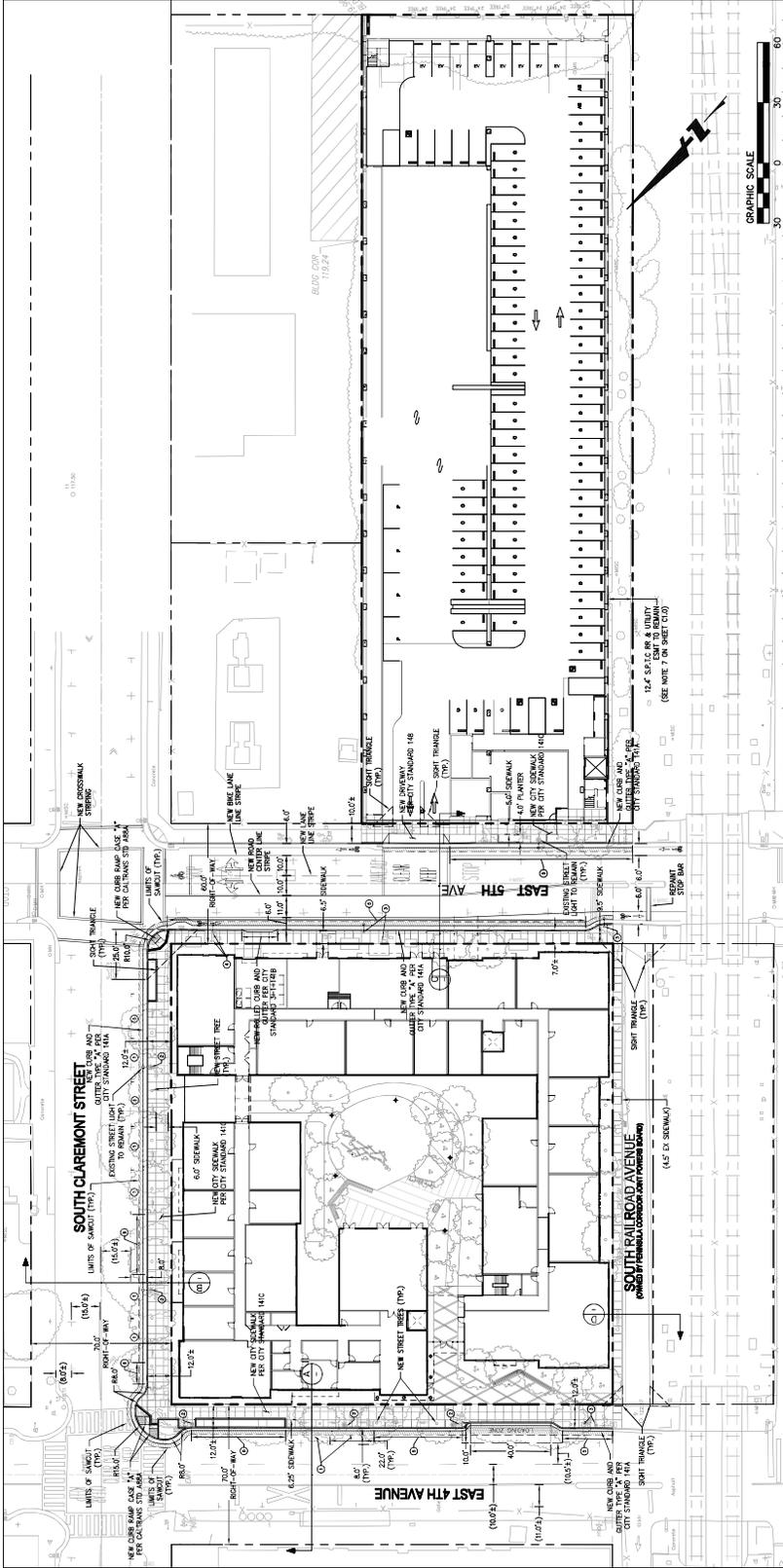
K:\2018\181271_480_E4TH\SUR\DWG\BNDY\480 E4TH_AVE_PLAT_UPDATE2.DWG HOR. & VERT. SCALE: 1"=20'



1730 N. FIRST STREET
SUITE 600
SAN JOSE, CA 95112
408-467-9100
www.bkf.com

Subject PED. BRIDGE OVERCROSSING ESMT.
E. 5TH AVE., SAN MATEO, CA
Job No. 20181271 DTSM-Residential
By DSD Date 7-17-2020 Chkd. DSD
SHEET 1 OF 1

EXHIBIT B
DEVELOPMENT PLAN



LEGEND

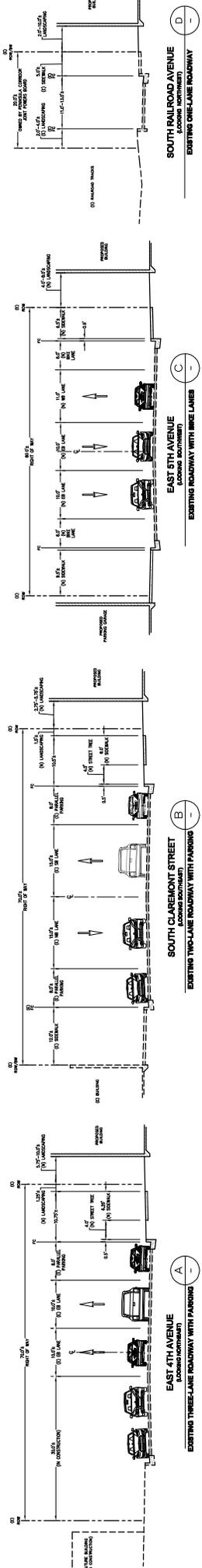
- PROPERTY LINE
- ADJACENT LOT LINE
- STREET CENTER LINE
- VERTICAL CURB AND GUTTER
- ROLLED CURB AND GUTTER
- AS DEEP LIFT
- SAWOUT LINE
- NEW CONCRETE PAVING

KEYNOTES

- ① STANDARD 8' x 22' PARALLEL PARKING STALL
- ② EXISTING STREET LIGHT TO REMAIN
- ③ RELOCATED EXISTING STREET LIGHT
- ④ EXISTING MEMORIAL STREET LIGHT TO BE PROTECTED, SALVAGED, AND RELOCATED IN SIMILAR LOCATION OUTSIDE PAINT OF TRAVEL
- ⑤ PAINTED RED CURB - NO PARKING

NOTES

1. PEDESTRIAN AND BICYCLIST IMPROVEMENTS SHALL BE CLARIFIED DURING CONDITIONS OF APPROVAL.
2. RESTRIPE EASTBOUND 5TH AVENUE WITH TWO THROUGH LANES, TWO DRIVEWAYS TO THE DELAWARE STREET INTERSECTION, AT THE PROJECT BEARING RIGHT AND SHARED LEFT TURNING 5TH AVENUE WOULD BE SHARED THROUGH-ROIGHT LANE. THE INTERSECTION OF DELAWARE STREET AND 5TH AVENUE WOULD REQUIRE SIGNAL REWIRING.
3. INSTALL "KEEP CLEAR" MARKINGS ALONG EASTBOUND 5TH AVENUE IN FRONT OF PROPOSED PROJECT DRIVEWAY.
4. IMPROVEMENT CLASS II BIKE LANES PER THE 2020 BIC MASTER PLAN ALONG EASTBOUND 5TH AVENUE, FROM EAST OF THE RAILROAD TRACKS TO DELAWARE STREET.
5. INSTALL CROSSWALKS AT THE INTERSECTION OF CLAREMONT STREET AND 5TH AVENUE ON ALL APPROACHES.
6. REMOVE ALL ON-STREET PARKING ALONG BOTH SIDES OF 5TH AVENUE FROM EAST OF THE RAILROAD TRACKS TO DELAWARE STREET FOR LANE RESTRIPE, IMPLEMENTATION OF BIKE LANES AND SHORT ROBBUITS.
7. IMPROVEMENT A BICYCLE RAILROAD ON SOUTH CLAREMONT STREET NEAR THE PROJECT FRONTAGE.
8. SET BACK TURNING AND LOADING ZONE PARKING MOVEMENTS ON 5TH AVENUE.



PROPOSED SECTIONS
NOT TO SCALE

EXHIBIT C

SCHEDULE OF PERFORMANCE

<u>Action/Obligation</u>	<u>Section Reference</u>	<u>Timeline for Performance</u>
Developer shall submit for City review a Financing Proposal with supporting documentation.	§5.4(a)	Provided as of the Effective Date.
City shall review preliminary Financing Plan and approve or disapprove.	§5.4(c)	Within 15 working days after submission.
City shall execute Compensation Agreement with all taxing entities.	§11.3(a)	Prior to Developer submitting an application for Low Income Housing Tax Credits from TCAC.
City shall complete relocation of the Worker’s Resource Center at the City’s sole cost.	§6.6(c)	At least 120 business days prior to the close of Escrow.
Developer shall obtain, with the reasonable cooperation of the City, all approvals from the City required for the issuance of a building permit (the “Building Permit”) and close Escrow.	§5.2(b)	Within 18 months of the Effective Date, subject to extensions set forth in Section 5.2(b)
City shall record the Garage Easement Agreement, Residential Ground Lease, Regulatory Agreement and Deed of Trust and execute the Garage License Agreement, Garage Maintenance Agreement and Promissory Note.	§6.4; §7.7(c); §7.7(d)	Concurrently with the close of Escrow.
Developer shall commence construction of the Improvements.	§7.4	Within 30 days from the close of Escrow.
Developer shall provide Tenant Selection and Marketing Plan for City review.	§5.7	Within 12 months from the close of Escrow.
Developer shall diligently prosecute to completion the construction of the Improvements.	§7.5	Within 36 months following the commencement of construction.
City shall furnish Garage Improvements Certificate of Completion.	§7.7(b)	Within 30 days after completion of the Garage Improvements.
City shall furnish Residential Improvements Certificate of Completion.	§7.7(a)	Within 30 days after completion of the Residential Improvements.

EXHIBIT D

INITIAL FINANCING PLAN

This Financing Proposal represents an estimate of the total development costs and expected funding sources. The City and the Developer acknowledge that the Developer may pursue additional funding options and the list of funding sources described above is not intended to be a limitation on the sources that the Developer may utilize to finance the construction and operation of the Development. The Developer will update the Financing Proposal in accordance with Section 5.4(b) of the Agreement. The Financing Proposal shall be in effect until a Financing Plan is approved by the City pursuant to Section 5.4(b).

Sources of Funds

	<u>CONSTRUCTION</u>	<u>PERMANENT</u>
State, Local, Federal Assistance:		
County AHF	16,500,000	16,500,000
City Commercial Linkage Fee Fund	4,000,000	4,000,000
City In-Lieu Parking Fund	5,000,000	5,000,000
State Infill Infrastructure Grant	4,155,013	4,155,013
City Low-Moderate Income Housing Asset Fund	2,850,000	2,850,000
City HOME Program Income	650,000	650,000
Construction Loan	107,630,639	
Construction Loan - Taxable Tail	7,000,000	
GP Contribution	100	17,433,105
Tax Credit Proceeds	9,156,323	61,042,154
Permanent Loan - Tranche A		38,470,900
Permanent Loan - Tranche B		28,343,100
Subordinate Surplus Cash Loan		7,000,000
Total Sources	<u>156,942,075</u>	<u>185,444,272</u>
Total Development Costs	<u>156,942,075</u>	<u>185,444,272</u>

Uses of Funds

	<u><u>TOTAL COST</u></u>
LAND COSTS	
Acquisition including Closing Costs	1,737,971
TOTAL LAND COSTS	<u><u>1,737,971</u></u>
DIRECT CONSTRUCTION COSTS	
Offsite Improvements (Repl. Parking)	9,123,975
Residential Site Work & Structures	76,677,134
Residential Parking Structure	5,744,850
Commercial Parking Structure	10,403,783
Contractor's Overhead & Profit	3,013,184
General Conditions	5,436,581
Construction Contingency	24,643,116
Contractor's Bond & Insurance	1,577,491
TOTAL CONSTRUCTION COSTS	<u><u>136,620,115</u></u>
INDIRECT COSTS	
Local Permits and Impact Fees	7,694,438
Architectural and Engineering Fees	3,366,194
Consultants and Professional Services	1,377,705
Developers Fee	21,183,105
Indirect Construction Costs Contingency	275,400
Relocation	0
Legal	334,000
TOTAL INDIRECT COSTS	<u><u>34,230,843</u></u>
FINANCING COSTS	
Construction Loan Interest	7,518,545
Construction Loan Fees/Expenses	2,297,023
Permanent Loan Fees/Expenses	287,500
Tax Credit Costs	157,605
Capitalized Reserves	1,352,670
Other (Soft Cost Contingency)	782,000
TOTAL FINANCING COSTS	<u><u>12,395,344</u></u>
RENT-UP COSTS	
Marketing /Advertising Expense	210,000
Common Area Furnishings	250,000
TOTAL RENT UP/MARKETING COSTS	<u><u>460,000</u></u>
TOTAL DEVELOPMENT COSTS	<u><u>185,444,272</u></u>

EXHIBIT E

FORM OF GROUND LEASE

GROUND LEASE

By and Between

CITY OF SAN MATEO
(Lessor)

and

MP DOWNTOWN SAN MATEO ASSOCIATES, L.P.
(Lessee)

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GROUND LEASE

This Ground Lease ("Lease"), is entered into effective as of _____, 20__, by and between the City of San Mateo, a California charter city (the "Lessor") and MP Downtown San Mateo Associates, L.P., a California limited partnership (the "Lessee").

RECITALS

A. The Lessor is the fee owner of: (i) that certain property located at 480 East 4th Avenue; and (ii) the airspace over the adjacent public street, each as more fully described in Exhibit A-1 and Exhibit A-2 attached to this Lease and incorporated into this Lease by this reference (collectively, the "Land").

B. The Lessee will develop, own and operate two hundred and twenty-five (225) units, including 2 unrestricted manager's units of affordable multifamily rental housing located on the Land in the City of San Mateo, California defined as the "Improvements" for a period of ninety-nine (99) years pursuant to the terms of the Lease.

C. The Improvements may be financed through one or more alternative construction and permanent lenders and insured or guaranteed by a credit enhancement provider.

D. The Lessor desires to lease the land upon which the Improvements will be constructed for a period of ninety-nine (99) years pursuant to the terms of the Lease.

NOW, THEREFORE, in consideration of the promises and the respective covenants and agreements contained in this Lease, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions.

(a) "Operating Expenses" with respect to a particular fiscal year shall mean the following costs reasonably and actually incurred for operation and maintenance of the Project to the extent that they are consistent with the annual budget for the Project, approved by the City pursuant to the Regulatory Agreement and 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 Project;
- (2) Debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on loans associated with construction of the Project and approved by the City in the Financing Plan;
- (3) Property management fees and reimbursements;

- (4) Premiums for property damage and liability insurance;
- (5) Utility services not paid for directly by tenants, including water, electrical, sewer, and trash collection;
- (6) Maintenance and repair;
- (7) Any annual license or certificate of occupancy fees required for operation of the Project;
- (8) Security services;
- (9) Advertising and marketing;
- (10) Cash deposited into reserves for capital replacements of the Project;
- (11) Cash deposited into an operating reserve;
- (12) Resident services;
- (13) Any previously unpaid portion of the Developer Fee due (without interest) not exceeding a cumulative amount of the Developer Fee;
- (14) An annual partnership management fee of Twenty-Five Thousand Dollars per year (\$25,000) adjusted annually at three percent (3%) (Which shall accrue if not paid) and other fees approved by Senior Lenders included in the approved Financing Plan;
- (15) An annual audit fee;
- (16) Extraordinary operating costs specifically approved in writing by the City as part of the annual budget approval process pursuant to this Agreement;
- (17) Payments of deductibles in connection with casualty insurance claims not normally paid from reserves;
- (18) Fidelity bond premiums;
- (19) The amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves; and
- (20) Other ordinary and reasonable operating expenses approved in the Financing Plan or as otherwise approved in writing by the City and not listed above.
- (21) Annual Operating Expenses shall exclude the following: depreciation, amortization, depletion or other non-cash expenses; initial deposits to establish the operating reserve and the replacement reserve and any amount expended from a reserve account;

and any capital cost with respect to the Project not otherwise listed above, as determined by the accountant for the Project.

(b) "City Disposition and Loan Agreement" means the Disposition, Development and Loan Agreement by and between Lessor and Lessee dated _____, 2020.

(c) "City Loans" shall mean a loan, or loans in than amount of Twelve Million Five Hundred Dollars (\$12,500,000) from Lessor to Lessee as evidenced by the City Disposition and Loan Agreement.

(d) "City Loan Documents" means the City Disposition and Loan Agreement, City Regulatory Agreement, the promissory notes evidencing the City Loans and the deed of trust securing the City Loans.

(e) "City Regulatory Agreement" means the regulatory agreement by and between Lessor and Lessee, of even date herewith, setting forth the requirement to provide occupancy and certain services to a specified number of low and very low income households at affordable charges at the Project.

(f) "Effective Date" means the date first written above on which this Lease is effective.

(g) "Financing Plan" means a City approved Financing Plan pursuant to the terms of Section 5.4 of the City Disposition and Loan Agreement, containing the following: (1) a "sources and uses" breakdown of the costs of constructing the Improvement; and (2) an operating proforma for the Development. Such sources and uses breakdown and operating proforma shall reflect the Lessee's then current expectations for funding sources, development costs, and Annual Operating Expenses.

(h) "Gross Revenue" with respect to a particular fiscal year shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Project. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, interest on tenant security deposits not otherwise required to be paid to tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; net proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance and not paid to Senior Lenders; the proceeds of casualty insurance not used to rebuild the Project or replace damaged property and not paid to Senior Lenders; and condemnation awards for a taking of part or all of the Project for a temporary period not paid to Senior Lenders. Gross Revenue shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

(i) "Improvements" means the buildings, structures, surface parking, landscaping and other improvements, including any building fixtures, now or later located on the Land and generally consisting of approximately two hundred and twenty-five (225) units, including two unrestricted manager units, of multifamily rental housing as shown in the Lessee's approved planning application. The Improvements will include a restricted-access pedestrian

bridge for the Residents, located in the airspace over the adjacent public street, connecting the Improvements to the parking garage located at 400 East 5th Avenue.

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

(k) "Land" has the meaning set forth in Recital A.

(l) "Lease" has the meaning set forth in the first paragraph of this Agreement.

(m) "Lease Term" means the ninety-nine (99) year period set forth in Section 2.2 below, during which this Lease shall be in effect unless earlier terminated in accordance with the provisions of this Lease.

(n) "Lenders" means each and all of the lenders providing the Other Loans to Lessee, or guaranteeing, insuring or credit enhancing Other Loans to the Lessee.

(o) "Lessee" means MP Downtown San Mateo Associates, L.P., a California limited partnership.

(p) "Lessor" means the City of San Mateo, a California charter city.

(q) "Other Loan Documents" means all documents executed by the Lessee evidencing, guaranteeing, insuring or securing the Other Loans, including, but not limited to, regulatory agreements, notes, deeds of trust, security agreements, fixture filings, and financing statements.

(r) "Other Loans" shall mean any loans, certificates of participation financing and related credit enhancement now or later obtained by the Lessee as evidenced by promissory notes and secured by deeds of trust recorded against the Project or any installment sales financing (and any related security documents, including regulatory agreements, use agreements, security agreements, fixture filings, and financing statements required of the Lessee) which are given by the Lessee. Other Loans shall not include the City Loans.

(s) "Parties" shall mean the Lessor and the Lessee collectively.

(t) "Party" shall mean the Lessor or the Lessee individually.

(u) "Project" shall mean the Improvements and the Lessee's leasehold interest in the Land.

(v) "Resident" means the resident who is authorized by Lessee to occupy the Units.

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

(x) “Tranche C Loan” means a Lessor-approved loan provided to the Lessee by MidPen Housing Corporation or its affiliate, or another lender approved by Lessee and the Lessor, that is required to be repaid from 90% of Residual Receipts.

ARTICLE 2
LEASE OF THE LAND; RENTAL PROVISIONS; TAXES AND ASSESSMENTS

Section 2.1 Lease of the Land.

For and in consideration of the covenants and agreements to be kept and performed by the Lessee and the Lessor, the Lessor leases the Land to the Lessee, and the Lessee does take, hire and lease the Land from the Lessor pursuant to the terms of this Lease.

Section 2.2 Lease Term.

The term of this Lease shall commence on the Effective Date as set forth above and shall continue from such date until the expiration of ninety-nine (99) years, unless earlier terminated in accordance with this Lease.

Section 2.3 Ground Rent Charges.

The Lessee shall pay to the Lessor rent in the amount of Ninety Nine Dollars (\$99.00), which shall represent payment of rent equal to 1 per year for the first ninety-nine (99) years of the Lease Term, payable one time only upon execution of this Lease.

Section 2.4 Use of Project and Assurances of Lessee.

The Lessor and the Lessee understand and agree that the rent has been set at a nominal amount for the specific purpose of assisting the Lessee to operate and maintain the Project. In consideration of the nominal amount of the rent and the other financial assistance from the Lessor to the Lessee, the Lessee shall use the land and operate the Project in accordance with the uses outlined in this Lease. The Lessee agrees:

- (a) To operate the Improvements as affordable multifamily residential housing in accordance with the terms of the City Regulatory Agreement, and this Lease;
- (b) To maintain the character of the Project as required by this Lease and any Other Loan Documents or the City Loan Documents for so long as such Other Loan Documents, the City Loan Documents remain in effect;
- (c) To select Residents in accordance with a resident selection plan approved by the City;
- (d) Not to use the Project for any disorderly or unlawful purpose;

(e) To use commercially reasonable efforts to prevent any Resident from committing or maintaining any nuisance or unlawful conduct on or about the Project;

(f) To use commercially reasonable efforts to prevent any Resident from violating any of the covenants and conditions of this Lease with respect to the Project;

(g) To take commercially reasonable action, if necessary, to abate any violation of this Lease by any Resident upon notice from the Lessor;

(h) To provide Lessor with Project annual audited financial statements, copies of the current management plan, and the annual operating budget. Lessee shall also notify Lessor of any financial situation that may result in Lessee's inability to meet the Project's Annual Operating Expenses. In the event any payments due to Lessor as part of this Lease, the City Loan Documents and Other Loan Documents are not paid in full, the Lessee shall meet with Lessor to review alternatives to facilitate full payment; and

(i) To provide approximately 225 affordable units in accordance with the City Regulatory Agreement, provided, however, that such occupancy and rent restrictions shall terminate on a Permitted Transfer pursuant to Section 2.9 (b). With the exception of two (2) unrestricted manager units, all of the units developed on the Property shall be rent-restricted for occupancy by households whose gross income does not exceed ninety percent (90%) of Area Median Income (the "Eligible Households"), 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 (also, "Eligible Households"). "Area Median Income" means the median household income (adjusted for household size) of the Metropolitan Statistical Area in which San Mateo County is located, as established in accordance with Section 50093 of the California Health and Safety Code. Notwithstanding the foregoing, if required by the Lenders and/or Investor, commencing in the 57th year of the Lease Term, the affordability restrictions set forth above shall be modified to the extent necessary for Project financial feasibility. If such modification is necessary, Lessor and Lessee hereby agree that this Lease shall be revised on the Effective Date at to reflect the mutually agreed upon specific modifications to the affordability levels.

Notwithstanding Section 2.4 (i) above, in the event that the Project has a rental subsidy contract, and such rental subsidy contract is terminated, discontinued, or reduced at no fault of Lessee, the rent restrictions set forth in Section 2.4 (i) may be altered, but only to the extent necessary for the Project to remain financially feasible, as determined in Lessor's reasonable discretion, and provided that:

(1) Lessee diligently pursues an additional or alternative source of income or subsidy acceptable to Lessor to replace the rental subsidies; and

(2) All of the Project units must at all times be rent-restricted for occupancy by households whose gross income does not exceed one hundred percent (100%) of Area Median Income. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.

Lessor hereby acknowledges and agrees that Lessee's rights to use the Land include the right to maintain and operate an exclusive, restricted-access pedestrian bridge for the Residents, located in the airspace over the adjacent public street (as more particularly described on Exhibit A-2), connecting the Improvements to the parking garage located at 400 East 5th Avenue.

Section 2.5 Taxes and Assessments.

(a) Payment by Lessee. Lessee covenants and agrees during the entire Lease Term, at its own cost and expense, to pay the public officers charged with their collection, as the same become due and payable and before any fine, penalty, interest, or other charge may be added to them for nonpayment, all real estate taxes, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature, made, assessed, levied or imposed upon, or due and payable in connection with, or which become a lien upon, the Land, the Improvements, or any part of the Land or Improvements, or upon this Lease, as well as assessments for sidewalks, streets, sewers, water, or any other public improvements and any other improvements or benefits which shall, during the Lease Term, be made, assessed, levied, or imposed upon or become due and payable in connection with, or a lien upon the Land, the Improvements, or any part of the Land or Improvements, or upon this Lease.

(b) Lessee's Right to Contest. If Lessee disputes any amount or validity of any liens, taxes, assessments, or charges upon the Land or the Improvements, Lessee may contest and defend against the same at its cost, and in good faith diligently conduct any necessary proceedings in connection therewith to prevent and avoid the same; provided, however, that such contest shall be prosecuted to a final conclusion as speedily as possible. Lessor agrees to render to Lessee all reasonable assistance, at no expense to Lessor, in contesting the validity or amount of any such liens, taxes, assessments or charges, including joining in the signing of any protests or pleadings which Lessee may deem advisable to file; provided, however, that to the extent the Lessor is a party whose action is being contested, the Lessor's assistance shall be at the discretion of the Lessor. During any such contest, Lessee shall (by the payment or bonding of such liens, disputed taxes, assessments or charges, if necessary) prevent any advertisement of tax sale, any foreclosure of, or any divesting thereby of Lessor's title, reversion or other interest in or to the Land.

Section 2.6 Definitions.

As used in this Article 2, the term "Transfer" means:

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

(d) The leasing of part or all of the Land or Improvements; provided, however, that leases of the individual units included within the Improvements to Resident occupants shall not be deemed a Transfer for purposes of this Article 2.

Section 2.7 Purpose of Restrictions on Transfer.

(a) This Lease is entered into solely for the purpose of development and operation of the Project and its subsequent use in accordance with the terms of this Lease. The Lessee recognizes that the qualifications and identity of the Lessee are of particular concern to the Lessor, in view of:

(1) The importance of the development of the Land and Improvements as affordable housing to the general welfare of the community; and

(2) The leasehold assistance that has been made available by the Lessor for the purpose of making such development possible; and

(3) The reliance by the Lessor upon the unique qualifications and ability of the Lessee to serve as the catalyst for development of the Improvements and upon the continuing interest which the Lessee will have in the Land and Improvements to assure the quality of the use, operation and maintenance deemed critical by the Lessor in the development of the Land or Improvements; and

(4) The fact that a change in ownership or control of the Lessee, 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 Lessee or the degree thereof is for practical purposes a Transfer or disposition of the Land or Improvements; and

(5) The fact that the Land is not to be acquired or used for speculation, but only for development and operation by the Lessee in accordance with this Lease; and

(6) The importance to the Lessor of the standards of use, operation and maintenance of the Land and Improvements.

(b) The Lessee further recognizes that it is because of such qualifications and identity that the Lessor is entering into this Lease with the Lessee and that Transfers are permitted only as provided in this Lease.

Section 2.8 Prohibited Transfers.

The limitations on Transfers set forth in this Article 2 shall apply throughout the Lease Term. Except as expressly permitted in this Lease, the Lessee represents and agrees that the Lessee has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the Lessor, such approval not to be unreasonably withheld.

Any Transfer made in contravention of this Article 2 shall be void and shall be deemed to be a default under this Lease whether or not the Lessee knew of or participated in such Transfer.

Section 2.9 Permitted Transfers.

Notwithstanding other provisions of Article 2, the following Transfers shall be permitted and are hereby approved by the Lessor subject to satisfaction of the requirements of Section 2.10:

(a) Any Transfer creating a lien or trust relationship pursuant to an Other Loan permitted pursuant to this Lease or the City Loans.

(b) Any Transfer directly resulting from the foreclosure of an Other Loan Document, including the transfer in lieu of foreclosure to nominees of any Lender, or the granting of a deed in lieu of foreclosure of an Other Loan Document, including the transfer in lieu of foreclosure to the nominees of any Lender and any subsequent transfer, or as otherwise permitted under Article 4;

(c) The leasing of residential units within the Project in accordance with this Agreement;

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

(e) The City hereby approves a Transfer of a limited partnership interest in the Lessee to the Investor, or to an affiliate of the Investor (provided such affiliate provides documentation reasonably acceptable to the City that the affiliate has sufficient financial capability to provide the capital contributions set forth in the Financing Plan) and future transfers of such interest;

(f) Any Transfer to a nonprofit public benefit corporation recognized by the Internal Revenue Service to be an exempt organization pursuant to Section 501(c) (3) of the Internal Revenue Code of 1986, and affiliated with MidPen Housing Corporation ("MidPen"), subject to limited review by the Lessor to determine that such entity is a tax exempt organization, is affiliated with MidPen, and has adequate assets to carry out its obligations under this Lease, and Lessor expressly covenants that such consent shall not be unreasonably or arbitrarily refused;

(g) The Parties agree and acknowledge that MP Downtown San Mateo, LLC, shall remain the managing general partner of the Lessee throughout the Lease Term. In the event the general partner of the Lessee is removed by the limited partner of the Lessee for cause following default under the Lessee's partnership agreement, the City hereby approves the transfer of the general partner interest to a 501(c) (3) tax-exempt nonprofit public benefit corporation that is selected by the limited partner and approved in advance and in writing by the City, which approval shall not be unreasonably withheld;

(h) Any Transfer to a limited liability company or limited partnership, the managing member or partner of which is MP Downtown San Mateo, LLC, MidPen, or a nonprofit public benefit corporation affiliated with MidPen, subject to limited review by the Lessor to determine that such entity is a tax exempt organization, is affiliated with MidPen, and

has adequate assets to carry out its obligations under this Lease, and Lessor expressly covenants that such consent shall not be unreasonably or arbitrarily refused.

(i) A sublease or subleases of non-residential spaces in the Improvements. The Lessee shall not, without first obtaining the written consent of the Lessor, sublet the Improvements or any part of such Improvements, and Lessor expressly covenants that such consent shall not be unreasonably or arbitrarily refused. A loan to refinance the financing identified in Exhibit B.

(j) Any other Transfer approved by the Lessor in writing.

Section 2.10 Effectuation of Certain Permitted Transfers.

No Transfer of this Lease permitted pursuant to Section 2.9 or Section 2.11 (other than a Transfer pursuant to Section 2.9 (a), (b) or (e)), 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 reasonably satisfactory to the Lessor and in form recordable among the land records, shall expressly assume the obligations of the Lessee under this Lease and agree to be subject to the conditions and restrictions to which the Lessee is subject arising during this Lease, and or Improvements to the fullest extent that such obligations are applicable to the particular portion of or interest in the Land or Improvements conveyed in such Transfer. Anything to the contrary notwithstanding, the holder of an Other Loan whose interest shall have been acquired by, through or under a Other Loan Document or shall have been derived immediately from any holder thereof shall not be required to give to the Lessor such written assumption until such holder or other person is in possession of the Land or Improvements or entitled to possession thereof pursuant to enforcement of the Other Loan Document.

In the absence of specific written agreement by the Lessor, no such Transfer, assignment or approval by the Lessor shall be deemed to relieve the Lessee or any other party from any obligations under this Lease.

Section 2.11 Other Transfers with Lessor Consent.

The Lessor may, in its reasonable discretion, approve in writing other Transfers as requested by the Lessee. In connection with such request, there shall be submitted to the Lessor for review all instruments and other legal documents proposed to affect any such Transfer. If a requested Transfer is approved by the Lessor such approval shall be indicated to the Lessee in writing or denied by the Lessor within ninety (90) days of receipt by the Lessor of Lessee's request for approval of a Transfer. In the event the Lessor does not respond either granting or denying the request within ninety (90) days the request shall be deemed approved.

Section 2.12 Assumptions.

Except as allowed under Section 2.9, the Lease shall not be assumable by successor or assigns of the Lessee without the prior written consent of the City, which consent shall be granted or denied in the City's reasonable discretion. The Lease shall be assumable by a limited partnership, a general partner, or a nonprofit public benefit corporation affiliated with MidPen or

by any entity pursuant to a permitted or approved transfer as provided in Section 2.10 and 2.11 above.

ARTICLE 3
MAINTENANCE; USE OF PREMISES

Section 3.1 Title to Improvements.

The Lessor grants to the Lessee without warranty, express or implied, any right, title, or interest that the Lessor may have in the Improvements now or later located on the Land. The Improvements on the Land during the Lease Term shall be and remain the property of the Lessee; provided, however, that the Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Lease and in the performance of maintenance obligations set forth in this lease. When the Lease Term expires or, subject to applicable cure rights of any Lenders, when the Lease is otherwise terminated under the terms of this Lease, title to the Improvements shall revert to and vest in the Lessor without cost to the Lessor. It is the intent of the Parties that this Lease shall create a constructive notice of severance of the Improvements from the Land without the necessity of a deed from the Lessor to the Lessee after the Improvements have been constructed. The Lessee agrees to execute, at the request of the Lessor at the end of the Lease Term, a confirmatory quitclaim deed of the Improvements to the Lessor to be recorded at the Lessor's option and expense and any other documents that may be reasonably required by the Lessor or the Lessor's title company to provide the Lessor title to the Improvements. Lessee agrees that it will ensure all reserve funds other than those that are funded by Lessee or its affiliates outside any loan or grant funds will revert to Lessor at the end of the Lease Term.

Section 3.2 Permits, Licenses and Easements.

The Lessor agrees that, within ten (10) days after receipt of written request from the Lessee, it shall (at no expense to the Lessor) join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work the Lessee may do pursuant to this Lease, and shall also join in any grants of easements for public utilities useful or necessary to the development of the Land or of the Improvements. In the event that the Lessee desires to seek a change of zoning of the Land to permit a greater density of the development of the Land, the Lessor agrees to execute all applications or other documents which may be necessary or appropriate in connection therewith.

Section 3.3 Use of Project.

(a) The Lessee shall at all times during the Lease Term use or cause the Project to be used as affordable multifamily rental housing in accordance with the terms and provisions of the City Regulatory Agreement.

(b) Lessee shall also use or cause the Project to be used in a manner consistent with all applicable zoning and environmental laws of any governmental authority having jurisdiction over the Project, and with all requirements of any Lenders. Subject to the next sentence, the Lessee agrees to comply with all applicable and lawful statutes, rules, orders, ordinances,

requirements and regulations of the United States, the State of California, and of any other governmental authority having jurisdiction over the Project. The Lessee may, in good faith and on reasonable grounds, dispute the applicability of, or the validity of any charge, complaint or action taken pursuant to or under color of, any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same.

Section 3.4 Construction of the Improvements.

The Lessee shall commence construction of the Improvements within thirty (30) days after the Effective Date and shall diligently prosecute completion of the Improvements in accordance with the provisions of the Other Loan Documents and the City Loan Documents. If the Lessee determines that completion of the Improvements is not feasible because Lessee discovers Hazardous Materials, as defined in Section 5.5, on the Land during its construction work, Lessee may terminate this Lease without fault.

Section 3.5 Maintenance of the Project.

(a) The Lessee agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, of the Project in condition, repair and tenantable condition (and, as to landscaping, in a healthy condition) and in accordance with a management plan, as the same may be amended from time to time. The Lessee shall not permit the accumulation of waste or refuse matter on the Land or in the Project. The Lessee shall commit no act of waste and shall take good care of the Project and the fixtures and appurtenances therein, and shall, in the use and occupancy of the Project, conform to and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Lessee agrees to maintain the sidewalk along the frontage of the Land and assume duties of the property owner set forth in Chapter 17.24 of the San Mateo Municipal Code, "Sidewalk Maintenance".

(b) In the event that the Lessee breaches any of the covenants contained in this section and such default continues for a period of fifteen (15) 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 Land 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 Land and perform all acts and work necessary to protect, maintain, and preserve the Improvements and landscaped areas on the Land, and to attach a lien on the Land, or to assess the Land, 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 Lessee to the City upon demand.

(c) Not later than the last day of the Lease Term, the Lessee shall, at the Lessee's expense, remove all of the Lessee's personal property and those improvements made by the Lessee that have not become the property of the Lessor; repair all injury done by or in connection with the removal of the Lessee's personal property and improvements, and surrender the Project in good

condition. Lessor shall agree to accept the Land with any damage not caused by the misuse or neglect of the Lessee, the Lessee's agents, the Residents, and the Resident's visitors, including damage related to reasonable wear and tear resulting from the elements or any remaining damage caused by an event for which insurance coverage was not required under this Lease or the insurance coverage did not allow a complete restoration. The Lessee shall remove all personal property by the last day of the Lease Term if this Lease, unless agreed otherwise by the Lessor. All property of the Lessee remaining after the last day of the Lease Term shall be conclusively deemed abandoned and may be removed by the Lessor, and the Lessee shall reimburse the Lessor for the cost of such removal. The Lessor shall provide the Lessee with five (5) days prior notice before disposing of any such items.

(d) During the Lease Term, the Lessee shall not, without first obtaining the written consent of the Lessor, abandon the Project, or allow the Project to become vacant or deserted.

Section 3.6 Outdoor Public Access Area

During the term of the Ground Lease, after completion of construction of the Project, Lessee shall, at its own cost, create and maintain an approximately 1,940 square foot outdoor concrete plaza area on the corner of South Railroad Avenue and East 4th Avenue that shall be made available to the general public on a nonexclusive basis for their ingress, egress and use, as more particularly depicted on Exhibit C (the "Public Access Area"). The Public Access Area shall include a paved surface, bench, landscaping, lighting and signage describing rules of use. Any proposed signage to be used in the Public Access Area shall be reviewed in accordance with the City's Zoning Code and sign ordinance. Lessee at its own cost and expense, shall be responsible for the ongoing maintenance and repairs in the Public Access Area.

Section 3.7 Limitations on the Outdoor Public Access Area

(a) Lessor acknowledges that the use of the Public Access Area by the general public is nonexclusive. Lessee, its successors, assigns, grantees and licensees, shall have the right to use and occupy the Public Access Area in any manner that does not unreasonably interfere with the use of the Public Access Area by the general public. Lessor acknowledges and agrees that temporary obstruction, blockage, encroachments or limitations in the Public Access Area reasonably necessary for development, construction, installation, maintenance, repair, replacement, reconstruction or removal of improvements within and outside the Public Access Area shall not constitute unreasonable interference with the Public Access Area. Lessee shall establish a list of additional limitations, rules and requirements regarding the Public Access Area (the "Public Access Area Rules"), which shall be subject to the prior consent of the Lessor, which consent shall not be unreasonably withheld or delayed. Lessee may modify the Public Access Area Rules at its reasonable discretion, provided that any such proposed changes shall first be submitted to Lessor for its consent, which consent shall not be unreasonably withheld or delayed. The Parties acknowledge and agree that regardless of the provisions of this section the Public Access Area shall remain private property and that the granting of access to the Public Access Area does not convert the Public Access Area into public property.

(b) Lessor agrees that Lessee is not making any representations or warranties regarding the Public Access Area. Lessor understands, acknowledges and agrees that the general public's access to and use of the Public Access Area shall be at the general public's own risk. Lessor on behalf of itself, its employees, agents, and invitees hereby waives and releases any and all claims against Lessee arising from, out of, or in connection with the general public's access to and use of the Public Access Area, except to the extent arising from Lessee's active gross negligence or willful misconduct. Lessee shall not be liable to the Lessor or its employees, agents, invitees or any third party, for any injury loss or damage arising out of in connection with the access to and use of the Public Access Area, except to the extent arising from Lessee's active gross negligence or willful misconduct.

(c) Lessee retains the right of access to and control over the Public Access Area. Nothing contained in this provision shall be construed as precluding the Lessee's rights to grant access to third parties across the Public Access Area. The Parties acknowledge and agree that by providing access and use of the of the Public Access Area to the general public, the Lessee is not intending to and shall not be construed as providing or transferring any right or interest in the Property to the general public or any third party.

Section 3.8 Property Management.

(a) The Project shall at all times be managed by an experienced Management Agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Project in a manner that will provide decent, safe, and sanitary housing. The Lessee shall retain a property management agent that is acceptable to the Lessor to manage the Project (the "Management Agent"). The Lessor agrees that MidPen Property Management Corporation is acceptable to the Lessor as Management Agent. For any change in the Management Agent, the Lessee shall submit for the City's approval the identity of any proposed Management Agent. The Lessee 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 Lessee in writing

(b) Each year during the Term, Lessee shall provide to Lessor a quarterly report which shall include the following information for the previous quarter; unaudited financial statements, a report on unit vacancies and turnover, copies of material indicating significant procedural or policy changes affecting services and admissions, copies of significant complaints related to services including marketing and the applicant qualification and income certification of the affordable units, and a variance report showing actual versus budgeted expenses provided in the approved Annual Operating Expenses.

Section 3.9 Utilities.

The Lessee shall be responsible for the cost of all utilities, including water, heat, gas, electricity, waste removal, sewers, and other utilities or services supplied to the Project, and the Lessee shall pay or cause same to be paid currently and as due.

Section 3.10 Inspection.

Lessee shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection of the Project and Land by the Lessor and by public authorities with reasonable notice during reasonable business hours for the purposes of determining compliance with this Agreement.

Section 3.11 Subordination.

(a) In addition to the Lessee's right to encumber its leasehold estate in the Land and its fee in the Improvements, the Lessor agrees to encumber its fee title in the Land with any regulatory agreement and any deed of trust from any Lender. Upon written request by the Lessee, the Lessor agrees to provide the subordination provided in this Section, subject to the conditions described below, including the following:

(1) The liability of the Lessor under any documents executed in connection with any Other Loan shall be limited by the express terms of the instrument of subordination. The limitations shall include: the limitation of the Lessor's liability solely to the interest or interests subordinated, and the Lessor's right not to execute any instrument which would obligate Lessor for the payment of the Other Loan secured by a deed of trust to which the fee is subordinated.

(2) The Lessee shall not be in Material Default under the terms of this Lease at the time of a request for subordination. "Material Default" shall mean any material breach by the Lessee under this Lease, including, without limitation, the failure to pay rent then due and payable, or, the filing of a bankruptcy petition by or against the Lessee. The Lessee shall not be in Material Default if the Lessee has commenced to cure the Material Default at the time in question and diligently pursues such cure to completion.

(b) Provided the conditions of this Section are satisfied, the Lessor shall, within ten (10) days after written request by the Lessee, execute, acknowledge and deliver an instrument of subordination, together with other documents as may be reasonably required by a Lender from the Lessor to effectuate the provisions of this Section, without any charge by the Lessor to the Lessee for execution of such documents, subject to the terms and conditions contained in Section 4.10(a). The Lessor will immediately pay over to the Lessee proceeds received by the Lessor, if any, of any Other Loan and the proceeds of any Other Loan received by Lessor shall be considered a trust fund to be paid to Lessee. The agreement of subordination contained in this Lease shall be self-operative and no further instrument of subordination shall be necessary unless it be required by a Lender, or a title insurance company insuring any interest of a Lender. If any proceeds are made payable to both the Lessor and the Lessee, the Lessor shall immediately sign any papers necessary to transfer the proceeds to the Lessee.

Section 3.12 Non-Discrimination.

(a) There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the Lessee, 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, sub lessees, subtenants, or vendees in the premises herein leased.

(b) To the maximum extent permitted by law, the Lessee shall comply with the City's adopted Affordable Housing Marketing Policies, as such may apply to the Project. Notwithstanding anything to the contrary herein, nothing in this section shall require that the preference be based on a minimum duration for residency or employment. To the extent the preferences required under this Section are in conflict with the requirements of Section 42 of the Internal Revenue Code and implementing guidelines, the requirements of Section 42 will supersede.

ARTICLE 4
MORTGAGE LOANS

Section 4.1 Loan Obligations.

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

Section 4.2 Liens and Encumbrances against Lessee's Interest in the Leasehold Estate.

(a) The Lessee shall have the right to encumber the leasehold estate created by this Lease and the Improvements with the deeds of trust or mortgages of the Other Loans.

(b) For as long as the Project is subject to the Other Loan Documents or there is any lien securing any Other Loans:

(1) The Lessor shall not agree to any mutual termination or accept any surrender of this Lease, nor shall the Lessor consent to any amendment or modification of this Lease without the consent of any Lenders which have an outstanding Other Loan. In the event that the Lessor receives competing or conflicting offers to cure any default, the Lessor shall accept the offers to cure in the following order: First, the Lessee then each Lender in the same relative priority as their respective deeds of trust.

(2) Notwithstanding any default by the Lessee under this Lease, the Lessor shall have no right to terminate this Lease unless the Lessor shall have given any Lenders which have an outstanding Other Loan written notice of such default pursuant to Section 4.2(b)(7) of this Lease, and such Lenders shall have failed to remedy such default or acquire the Lessee's leasehold estate created by this Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section.

(3) Any Lender which has an outstanding Other Loan shall have the right, but not the obligation, at any time to pay any or all of the rental due pursuant to the terms of this Lease, and do any other act or thing required of the Lessee by the terms of this Lease, to prevent termination of this Lease. Each Lender shall have ninety (90) days after receipt of notice from the Lessor describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by the Lessee instead of by any Lender.

(4) In addition to the cure period provided in paragraph (3) above, if the default is such that possession of the Land may be reasonably necessary to remedy the default, or any Lender which has an outstanding Other Loan shall have a reasonable time after the expiration of such ninety (90)-day period within which to remedy such default, provided that: (i) such Lender shall have fully cured any default in the payment of any monetary obligations of the Lessee under this Lease within such ninety (90)-day period and shall continue to pay currently such monetary obligations when the same are due; and (ii) such Lender shall have acquired the Lessee's leasehold estate under this Lease or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

(5) Any default under this Lease which by its nature cannot be remedied by any Lender shall be deemed to be remedied if: (i) within ninety (90) days after receiving written notice from the Lessor describing the default, or prior thereto, any Lender shall have acquired the Lessee's leasehold estate or commenced foreclosure or other appropriate proceedings; (ii) the Lender shall diligently prosecute any such proceedings to completion; (iii) the Lender shall have fully cured any default in the payment of any monetary obligations of the Lessee under this Lease which does not require possession of the Land; and (iv) after gaining possession of the Land, the Lender shall perform all other obligations of the Lessee under this Lease capable of performance by the Lender when the obligations are due.

(6) If the Lenders are prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving the Lessee from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Lender shall have fully cured any default in the payment of any monetary obligations of the Lessee under this Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Lender shall not interfere with the Lessor's efforts to seek compliance by the Lessee with any non-monetary obligation under this Lease.

(7) The Lessor shall mail or deliver to any Lenders which have any outstanding Other Loan, whose addresses will be provided to Lessor by Lessee, a duplicate copy of all notices which the Lessor may from time to time give to the Lessee pursuant to this Lease, including without limitation notices of an Event of Default. No notice by the Lessor to the Lessee under this Lease shall be effective unless and until a copy of the notice shall have been mailed or delivered to such Lenders as set forth in this Section. Absent Lessor's written notice to Lenders with delivery confirmation of all defaults by Lessee under this Lease, Lessor may not exercise any remedies for such defaults.

(8) In the event any Lender becomes the Lessee under this Lease by means of foreclosure or deed in lieu of foreclosure or pursuant to any new lease obtained under subsection (9) below, that Lender shall be personally liable under this Lease or such new lease only for the period of time that the Lender remains the Lessee under this Lease. Any such Lender shall have the right, without Lessor's consent, to assign the leasehold estate following acquisition of the leasehold estate by a foreclosure or granting of a deed in lieu of foreclosure. Nothing in this Section shall be construed to obligate any Lender to remedy any default of the Lessee, and any failure of any Lender to complete any such cure after commencing the same shall not give rise to any liability of any Lender to the Lessor or the Lessee.

(9) In the event a Lender, its designee or another purchaser in foreclosure, bankruptcy or other proceedings becomes the legal owner of the leasehold estate, and upon written request by the Lender given within sixty (60) days after becoming the legal owner of the leasehold estate, the Lessor shall enter into a new lease of the Land with or the Lender, or its nominee, purchaser, assignee or transferee, for the remainder of the Lease Term with the same agreements, covenants, reversionary interests and conditions (except for any requirements which have been fulfilled by the Lessee prior to termination) as are contained in this Lease and with priority equal to this Lease; provided, however, that the Lender shall promptly cure any defaults by the Lessee susceptible to cure by the Lender. In the event Lender, or its nominee, purchaser, assignee or transferee becomes the legal owner of the leasehold estate, such Lender, nominee, purchaser, assignee or transferee shall only be liable for acts or omissions of the tenant under the Lease taking place during the period in which it had record title to the leasehold estate and such liability is limited to the value of its interest in the leasehold interest and the Lease.

(10) The Lessor shall cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed Lender for the purpose of implementing the mortgagee-protection provisions contained in this Lease and allowing such proposed Lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security. The Lessor agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the Lease Term or rent under this Lease;

Section 4.3 Cost of Other Loans to be Paid by Lessee.

The Lessee shall bear all of the costs and expenses in connection with: (a) the preparation and securing of the Other Loans; (b) the delivery of any instruments and documents

and their filing and recording, if required; and (c) all taxes and charges payable in connection with the Other Loans.

Section 4.4 Proceeds of Loans.

It is expressly understood and agreed that all Other Loan and City Loan proceeds shall be paid to and become the property of the Lessee, and that the Lessor shall have no right to receive any such Other Loan or the City Loan proceeds.

Section 4.5 Notice and Right to Cure Defaults Under Loans.

Upon the recording of a Memorandum of Lease or this Lease, the Lessor may record in the office of the Recorder of the County in which the land is situated, a request for notice of any default under each Other Loan. In the event of default by the Lessee under an Other Loan, the Lessor shall have the right, but not the obligation, to cure the default. Any payments made by the Lessor to cure a default shall be treated as rent due from the Lessee which shall be paid, with interest which shall equal the Lessor's Local Agency Investment Fund Rate (established pursuant to Section 16429.1 of the California Government Code) within thirty (30) days of the date on which the payment was made by the Lessor. If Lessee is not able to cure a default under the Other Loan, Lessee agrees to work cooperatively with Lessor if Lessor seeks to cure the default, pay any amounts due under the Other Loan if accelerated, or assume the Other Loan.

ARTICLE 5
INSURANCE

Section 5.1 Required Insurance Coverage.

Coverage during the Ground Lease Term shall be at least as broad as:

(a) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(b) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

(c) Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

Section 5.2 Additional Insurance Provisions

(a) **Broader Coverage:** If the Developer maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(b) **Self-insured retentions:** Self-insured retentions for insurance required herein must be declared to and approved by the City. At the option of the City, either: the developer shall cause the insurer shall to reduce or eliminate such self-insured retentions as respects the City, its elected and appointed officials, employees, and agents; or the developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

(c) **Endorsements:** The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) The City, its elected and appointed officials, employees, and agents are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Developer. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

(2) For any claims related to this project, the Developer's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the Developer's insurance and shall not contribute with it.

(3) Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City.

(d) **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

(e) **Waiver of Subrogation:** Developer hereby agrees to waive rights of subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of

subrogation in favor of the City for all work performed by the Developer, its employees, or agents.

(f) **Verification of Coverage:** Developer shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Section 5.3 Proceeds of Insurance.

(a) For so long as any Other Loan or the City Loans on the Project is outstanding: All fire and standard risk or extended coverage (casualty) insurance proceeds shall be applied to the payment of the costs of repairing or rebuilding that part of the Project damaged or destroyed (including replacement of damaged personal property) if: (1) the Lessee agrees in writing within ninety (90) days after payment of the proceeds of insurance that such repair or rebuilding is economically feasible; (2) each Lender with an outstanding Other Loan permits or requires such repair or rebuilding; provided that the extent of the Lessee's obligation to restore the Project shall be limited to the amount of the insurance proceeds.

If the property is not repaired or rebuilt, all such proceeds shall be applied in a manner consistent with the terms of the Other Loans and the City Loans.

(b) All insurance proceeds received under the policies set forth in this Article 5 shall be paid to the Lessee, provided that the Lessee shall apply such proceeds, to the extent possible, for reconstruction or repair in a manner consistent with the provisions of Section 6.2.

Section 5.4 Indemnification.

The Lessor will not be liable for any loss, injury, death, or damage to persons or property that at any time may be suffered or sustained by the Lessee or by any person who may at any time be using, occupying, visiting, or leasing the Project or the Land, or any portion thereof, to the extent such loss, injury, death, or damage shall arise out of any act, omission, or negligence of the Lessee or of any occupant, tenant, visitor, or use of any portion of the Project or Land, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the manners or things set forth. The Lessee shall indemnify the Lessor against all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death or damage. The Lessee waives all claims against the Lessor for damages to the Improvements that are not on or hereafter placed or built on the Land and to the property of the Lessee in, on, or about the Land, and for injuries to persons or property in or about the Land, from any cause arising at any time. The three preceding sentences will not apply to loss, injury, death, or damage arising by reason of: (i) a pre-existing condition; (ii) the negligence or misconduct of the Lessor, its agents, or employees; (iii) anything covered by the City's indemnity in Section 5.6(a)

below; or (iv) any other activities, actions or omissions for which City has indemnified Lessee under the City Disposition and Loan Agreement, including but not limited to the City's operation, use, security, safety, maintenance, repair, replacement, reconstruction, or removal of the Garage Improvements as further set forth in Section 7.7(b) thereof.

Section 5.5 Hazardous Materials Indemnification.

(a) No Hazardous Materials Activities. The Lessee hereby represents and warrants to the City that, at all times from and after the Closing Date, the Lessee shall not cause or permit the Land 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, except to the extent such Hazardous Materials were present on or about the site prior to the Closing Date.

(b) Definition of Hazardous Material or Hazardous Substances. As used in this Section, "Hazardous Materials" or "Hazardous Substances" shall mean the following: hazardous substance, hazardous waste, infectious waste, or hazardous material as defined in any federal, state or local statute, ordinance, regulation, or rule applicable to the Land, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) or Sections 25280 et seq., 25310 et seq., 25110 et seq., or 25500 et seq. of the California Health and Safety Code at such time; any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq.), or California Water Code (Section 13000 et seq.) at such time; and any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Land, including asbestos, asbestos-containing materials, radon gas, oil or any fraction thereof of petroleum products, but excluding any substances or materials used in the construction, development, maintenance or operation of the Improvements, so long as the same are used in accordance with all applicable laws.

(c) Definition of Hazardous Materials Law: As used in this Section, Hazardous Materials Law shall mean: All federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the leased premises or any portion thereof.

(d) Indemnity. Lessee agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Lessor) Lessor, its board members, officers, and employees from and against any and all claims, losses, damages, liabilities, fines penalties, charges, administrative and judicial proceedings and orders judgments, remediation action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure during the Lease Term of Lessee or any employees, agents, contractors or subcontractors of the Lessee, other than any indemnitee, 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 Land; (2) any releases or discharges of any Hazardous Materials by Lessee or any employees, agents, contractors or subcontractors of the Lessee, other than any indemnitee, occurring during the Lease Term into, on, under or from the Land, except for Hazardous Materials that existed in , on, or under the Land prior to the execution of this Lease; (3) any activity carried on or undertaken on or off the Land during the Lease Term by Lessee or any employees, agents, contractors or subcontractors of Lessee, 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 Land. The provisions of this subsection shall survive expiration of the Lease Term, as set forth in Section 2.2, or other termination of this Lease, and shall remain in full force and effect. Notwithstanding the foregoing, Lessee's duty to indemnify Lessor under the provisions of this Section shall not include any claims arising from any acts, omissions or events occurring subsequent to a Transfer approved by Lessor pursuant to this Lease. This indemnity obligation shall not extend to any claim arising from Lessor's negligence or willful misconduct or to any claims for which Lessor indemnifies Lessee for under this Lease and/or the City Disposition and Loan Agreement.

Section 5.6 "As Is" Conveyance.

(a) Any deed or ground lease to Lessee shall be made "As-Is," with no warranties or representations by the Lessor concerning the condition of the Land, including the presence or absence of any Hazardous Materials. Lessee hereby agrees and acknowledges that except in the event of any fraud, misrepresentation, or withholding of information by Lessor: (1) neither Lessor, nor anyone acting for or on behalf of Lessor, has made any representation, statement, warranty or promise to Lessee concerning the development potential or condition of the Land; (2) in entering into this Lease, Lessee has not relied on any representation, statement or warranty of Lessor, or anyone acting for or on behalf of Lessor, other than as may expressly be contained in writing in this Lease; (3) all matters concerning the Land have been or shall be independently verified by Lessee and that Lessee shall purchase or lease the Land on Lessee's own prior examination thereof; and (4) THAT LESSEE IS PURCHASING OR LEASING THE LAND, AS APPLICABLE, IN AN "AS IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR. Notwithstanding anything to the contrary in this Lease, the Lessor shall indemnify Lessee from liability due to any environmental issues not identified in the Phase I Environmental Site Assessment for 480 East 4th Avenue dated July 31, 2018, the Phase I Environmental Site Assessment for 400 East 5th Avenue dated July 31, 2018, and the Limited Phase II Subsurface Investigation for 480 East 4th Avenue and 400 East 5th Avenue dated November 29, 2018, all prepared by AEI Consultants, in addition to the Environmental Site Characterization for 400 East Fifth Avenue and 480 East Fourth Avenue dated for February 6, 2020 and prepared by Langan Engineering and Environmental Services, Inc. Lessor further agrees to indemnify Lessee for any liability associated with groundwater contamination at or under the Site that first existed on the Site prior to the Closing Date; Lessor further agrees to indemnify Lessee from liability due to any environmental issue that arises independent from the purpose of this Lease.

(b) General Release. Subject to subsection (a) above and all other indemnities provided by the Lessor to Lessee in this Lease and/or in the City Disposition and Loan Agreement, Lessee and its owners, employees, agents, assigns and successors agree that upon the

execution of the Lease, Lessee shall be deemed conclusively to have released and discharged Lessor and its agents, employees, trustees, assigns and successors, from any and all damages, losses, demands, claims, debts, liabilities, obligations, causes of action and rights, whether known or unknown, by Lessee regarding the Land, including, but not limited to, the environmental condition of the Land.

(c) Waiver of Civil Code §1542. Lessee agrees that, with respect to the General Release contained in subsection (b) above, the General Release extends to all matters regarding the Land, whether or not claimed or suspected, to and including the date of execution hereof, and constitutes a waiver of each and all the provisions of the California Civil Code §1542, which reads as follows:

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

_____ Initial

Lessee acknowledges that the effect and import of the provisions of Civil Code §1542 have been explained to it by its own counsel. Lessee understands and acknowledges the significance and the consequence of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, losses or liabilities that it may hereinafter incur from the waiver of these unknown claims.

ARTICLE 6
CONDEMNATION, DAMAGE OR DESTRUCTION OF THE PROJECT

Section 6.1 Condemnation.

If the Project or the fee interest in the Land or any part of them shall be taken or condemned, for any public or quasi-public purpose or use by any competent entity in appropriate proceedings, or by any right of eminent domain, the Lessor and the Lessee shall request that awards and other payments on account of a taking of the Project or the fee interest in the Land (less costs, fees and expenses incurred by the Lessor and the Lessee in connection with the collection of such awards and other payments) shall be divided by the presiding court between loss of value of the fee interest in the Land and loss of value of the Project. In any case, such awards and payments shall be applied as follows:

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

(1) If the Lessee reasonably believes restoration is economically feasible and unless the Lessee is then in default and the opportunity to cure has expired under the Other Loan Documents first, to pay the cost of restoration of the Project, provided that the extent of the Lessee's obligations to restore the Project shall be limited to the amount of the net award and payment received by the Lessee on account of the taking plus any amount contributed by Lessor to be used for rebuilding.

(2) Second, or first if the Lessee does not reasonably believe restoration is economically feasible or the Lessee is in default and the opportunity to cure has expired under the Other Loan Documents or City Loan Documents, to any Lenders (in the order of their respective lien priority, if there is more than one Lender) or Lessor in an amount equal to the decrease (if any) in the value of the security for their respective Other Loans and the City Loans as a result of the partial taking (calculated as set forth below in this subsection), less amounts payable to or recovered by the Lender or Lessor pursuant to such taking, but not to exceed the unpaid balance of their Other Loans and the City Loans, as applicable. For purposes of this subsection, the amount of decrease in the value of the security for an Other Loan or the City Loans shall be the amount, if any, necessary to reduce the outstanding principal of said Other Loan such that the Loan to Value Ratio (as defined below) of said Loan immediately following the taking is equal to the Loan to Value Ratio of said Loan immediately preceding the taking. Loan to Value Ratio shall mean that fraction the numerator of which is the sum of the principal amount of the Other Loan or the City Loans (as applicable) plus the principal amounts of all Other Loans or the City Loans higher in lien priority to the Other Loan or the City Loans (as applicable) and the denominator of which is the appraised value of the Project immediately following the taking or immediately preceding the taking, as applicable. The values of the Project immediately preceding the taking and immediately following the taking shall be determined by an MAI or SRI appraiser selected by the Lessee.

(3) The balance, if any, shall be divided between the Lessor and the Lessee in the manner specified in subparagraph (e) below; provided, however, if the taking has no effect on the value of the Lessor's fee interest in the Land or reversionary interest in the Improvements, the balance shall be paid exclusively to the Lessee.

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

(c) Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period during the Lease Term shall be paid to the Lessee and first applied to pay the cost of relocation of Residents and restoration of any damage to or destruction of the Project if the Lessee determines that restoration is feasible. If the Lessee determines that such restoration is not feasible, the Lessee and the Lessor shall petition the court to determine the relative damages to the Lessee and the Lessor, and net awards and payments shall be made as the court determines. Net awards and payments received on account of a taking

for temporary use not exceeding one (1) year and relating to a period beyond the Lease Term shall be paid to the Lessor.

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

(1) First, to any Lenders with then-outstanding Other Loans or the Lessor with an outstanding City Loans secured by the Project (in the order of their respective lien priority, if there is more than one Lender), an amount equal to the unpaid balance secured by their respective Other Loan or City Loans (as applicable) to the extent there are sufficient funds to make such payments;

(2) The balance, if any, shall be divided between the Lessor and the Lessee in the manner specified in subparagraph (e) below; provided, however, if the taking has no effect on the value of the Lessor's fee interest in the Land or reversionary interest in the Improvements, the balance shall be paid exclusively to the Lessee.

(e) The Lessee shall receive reimbursement for any funds it has reasonably expended for repair and/or reconstruction of the Project (other than funds received from Lenders or the Lessor) pursuant to Article 6. The value of the Lessee's and Lessor's interest in the Lease, the residual value of the Land, and the Improvements shall be determined by an MAI or SRI appraiser selected by the Lessee.

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

(g) If the Project is taken or condemned during the last five (5) years of the Lease Term under circumstances described in subparagraph (a) above, the Lessee may elect to terminate the Lease and proceeds of any payment or award shall be distributed in accordance with the provisions of subparagraphs (d) and (e) above.

Section 6.2 Administration of Construction Fund in the Event of Condemnation, or Damage or Destruction of Project.

In the event that the Other Loans and the City Loans have been paid in full, and if the Project or any part of it is to be repaired or reconstructed, after damage or destruction of the Project or its condemnation, all proceeds collected under any and all policies of insurance referred to in Article V above covering such damage or destruction, or all compensation received by Lessee for such taking by the exercise of the power of eminent domain, shall be paid into a special fund to be created and held by the Lessee and to be designated as the construction fund, during such repairing or reconstructing. Any surplus of such insurance or condemnation proceeds remaining after the completion of all payments for such repairing or reconstructing shall be held or applied by the Lessee in a manner consistent with the applicable provision of Article V or this Article.

Section 6.3 Lessee, Lessor, Lenders to be Made Parties in Legal Proceedings.

(a) In the event proceedings shall be instituted: (1) for the exercise of the power of eminent domain; or (2) as a result of any damage to or destruction of the Project, the

Lessee, the Lessor, and any Lender with a then-outstanding Other Loan shall be made parties to those proceedings, and if not made parties by the petitioning party, shall be brought into the proceedings by appropriate proceedings of other parties so that adjudication may be made of the damages, if any, to be paid to the Lessee, the Lessor and the Lenders as compensation for loss of their rights in the Improvements or the Land, or for damage to or destruction of the Project. Should the Lessor or the Lessee receive notice of institution of any proceedings subject to Section 6.1, the Party receiving such notice shall notify the other in accordance with Section 9.2 of this Lease, not later than thirty (30) days after receiving such notice.

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

ARTICLE 7 ASSURANCES OF LESSOR

Section 7.1 Lessor to Give Peaceful Possession.

The Lessor covenants that it owns in fee simple, and that it has good and marketable title to the Land and that the Land is free of all easements, covenants, conditions and restrictions except for those exceptions set forth in Exhibit D to this Lease. The Lessor has the full right and authority to make this Lease. The Lessor covenants and warrants that the Lessee and its Residents shall have, hold and enjoy, during the Lease Term, peaceful, quiet and undisputed possession of the Land leased without hindrance or molestation by or from anyone so long as the Lessee is not in default under this Lease.

Section 7.2 Lessor to Lease Project with Marketable Title.

The Lessor covenants and warrants that there are no outstanding liens and encumbrances on the Land, other than permitted exceptions as shown on the preliminary title report from _____ Title Insurance Company dated _____, 20__, and any other exceptions or encumbrances reasonably acceptable to the Lessee.

Section 7.3 Release of Lessor.

The Lessor may sell, assign, transfer or convey (but not encumber), with the prior written consent of any Lenders, all or any part of Lessor's interest in the Land, reversionary interest in the Improvements or this Lease without obtaining the Lessee's consent, provided that the purchaser, assignee, or transferee expressly assumes all of the obligations of the Lessor under this Lease by a written instrument in a form reasonably satisfactory to the Lessee and recordable in the Official Records of the jurisdiction in which the Land is located. In the event the Lessor intends to sell, assign, transfer, or convey all or any part of the Land, the Lessor shall notify the Lessee of such intention and the terms of such sale not later than ninety (90) days before anticipated close of escrow. The Lessee shall then have sixty (60) days after the receipt of notice from the Lessor to exercise a right of first refusal on the same terms as are included in the Lessor's notice to the Lessee.

In the event of a sale, assignment, transfer or conveyance by Lessor of the Land or its rights under this Lease, the same shall operate to release the Lessor from any future liability upon any of the covenants or conditions of this Lease, expressed or implied, in favor of Lessee, and in such event the Lessee shall look solely to the successor in interest of the Lessor in and to the Land or this Lease. This Lease shall not be affected by any such sale, and the Lessee agrees to attorn to any such purchaser or assignee.

ARTICLE 8
DEFAULTS AND REMEDIES

Section 8.1 Events of Default; Remedy of Default by Lessee.

(a) Any one or more of the following events shall constitute an "Event of Default":

(1) Failure to pay rent, as required pursuant to Section 2.3 of this Lease, or any other payment required under this Lease, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nonpayment;

(2) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed, and (i) continuance of such failure for a period of sixty (60) days after receipt by the Lessee of written notice specifying the nature of such default, or (ii) if by reason of the nature of such default the same cannot be remedied within said sixty (60) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same; or

(3) A general assignment by the Lessee for the benefit of creditors; or

(4) The filing of a voluntary petition by the Lessee, or the filing of an involuntary petition by any of the Lessee's creditors seeking the rehabilitation, liquidation or reorganization of the Lessee under any law relating to bankruptcy, insolvency or other relief of debtors, provided that in the case of an involuntary petition Lessee shall have sixty (60) days to cause such petition to be withdrawn or dismissed; or

(5) The appointment of a receiver or other custodian to take possession of substantially all of the Lessee's assets or of this leasehold which appointment is not withdrawn or dismissed within sixty (60) days; or

(6) The Lessee becomes insolvent or declares it is unwilling to pay its debts as they become due; or any court enters a decree or order directing the winding up or liquidation of the Lessee or of substantially all of its assets; or the Lessee takes any action toward the dissolution or winding up of its affairs or the cessation or suspension of its use of the Project; or

(7) Attachment, execution or other judicial seizure of substantially all of the Lessee's assets or this leasehold, which is not dismissed, bonded, or stayed within sixty (60) days.; or

(b) Whenever any default shall have occurred and be continuing and upon expiration of any applicable cure periods provided in this Lease, and subject to the cure rights of Lenders of the Lessee set forth in this Lease, the Lessor may take whatever action at law or in equity as may appear reasonably necessary to enforce performance or observance of any obligations, agreements, or covenants of the Lessee under this Lease, including without limitation, termination of this Lease, provided, however, that for so long as an Other Loan encumbers this Project, this lease shall not be terminated. In the event of such default, the Lessor's remedies shall be cumulative, and no remedy expressly provided for in this Section shall be deemed to exclude any other remedy allowed by law.

Section 8.2 Cure of Material Breach by Lessee

If the Lessee defaults under the Lease, the Lessor shall give the Lessee, the tax credit limited partner and the Lenders written notice requiring that the default is to be remedied by the Lessee. If the default is not cured within the time set forth by the Lessor (which shall be a reasonable time for curing the default and shall in any event be at least ninety (90) days), the Lessor, the tax credit limited partner or the Lenders may take any action as may be necessary to protect their respective interests. Such action, in the event that the Lessee shall fail to perform any of its obligations under this Lease and such failure shall continue after the expiration of the cure period specified in this Section, shall include the right of the Lessor, the tax credit limited partner or the Lenders to cure such default and receive any expenditure with interest thereon (at the reference rate then in effect at [_____ Bank, N.A.] or any successor institution) from the Lessee within thirty (30) days after sending to the Lessee a statement for such expenditure and interest.

Section 8.3 Termination.

In the event of a total taking or in the event of damage, destruction, or a partial taking, other than a temporary taking of the Project, which the Lessee reasonably determines renders continued operation of the Project infeasible both as a whole and in substantial part, this Lease shall terminate (except if the Lessee is rebuilding the Project in accordance with the terms of this Lease), and in such event any proceeds shall be allocated pursuant to Section 5.3 or Article 6, as appropriate. In the event of a partial taking that does not result in termination pursuant to this Section, this Lease shall remain in full force and effect as to the portion of the Project remaining. Notwithstanding the preceding sentences, for so long as an Other Loan encumbers this Project, this lease shall not be terminated

Section 8.4 Redelivery of Premises.

At the expiration or sooner termination of this Lease, the Lessee will peaceably and quietly quit and surrender the premises to the Lessor in good order and condition, subject to the other provisions of this Lease.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Instrument Is Entire Agreement.

This Lease and the attached Exhibits constitute the entire agreement between the Parties with respect to the matters set forth in this Lease. This Lease shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Lessor and the Lessee relating to the lease of the Land by the Lessor to the Lessee.

Section 9.2 Notices.

All notices under this Lease shall be in writing signed by Authorized Officer(s) and shall be sufficient if sent by United States first class, certified mail, postage prepaid, or reputable private delivery service with a receipt showing the date of delivery, addressed:

If to the Lessor: City of San Mateo
 320 W. 20th Avenue
 San Mateo, CA 99403
 Attn: City Manager

If to the Lessee: MP Downtown San Mateo Associates, L.P.
 c/o MidPen Housing
 303 Vintage Park Drive, Suite 250
 Foster City, CA 94404
 Attn: President and Chief Executive Officer

or any other address as either Party may have furnished to the other in writing pursuant to the requirements of this Section as a place for service of notice. Any notice so mailed shall be deemed to have been given on the delivery date, the date that delivery is refused by the addressee or the date shown on the delivery receipt as the date delivery was attempted if undeliverable, as shown on the delivery receipt.

Section 9.3 Recording.

A Memorandum of Lease shall be executed by the Parties in recordable form and shall be recorded in the official records of the jurisdiction in which the Land is located. In the event this Lease is amended or assigned a memorandum of such amendment or assignment shall also be executed by the Parties in recordable form and shall be recorded in the official records of the jurisdiction in which the Land is located.

Section 9.4 Non-Waiver of Breach.

Neither the failure of the Lessor or the Lessee to insist upon strict performance of any of the covenants and agreements of this Lease nor the failure by the Lessor or the Lessee to exercise any rights or remedies granted to such Party under the terms of this Lease shall be deemed a waiver or relinquishment: (a) of any covenant contained in this Lease or of any of the rights or remedies of

the Lessee or the Lessor under this Lease; or (b) or the right in the future of the Lessor or the Lessee to insist upon and to enforce by any appropriate legal remedy a strict compliance with all of the covenants and conditions of this Lease.

Section 9.5 Effective Date; Counterparts.

This Lease shall become effective upon the commencement of the Lease Term. This Lease may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

Section 9.6 Lease Binding on Successors.

This Lease and all of its provisions and attached Exhibits shall inure to the benefit of, and shall be binding upon, the Lessor, the Lessee, and their respective permitted successors and permitted assigns and, as provided in this Lease, the Lenders.

Section 9.7 Relationship of Parties.

Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal or agent or of partnership, joint venture or association or of buyer and seller between the Lessor and the Lessee, it being expressly understood and agreed that neither the computation of any payments and other charges under the terms of this Lease nor any other provisions contained in this Lease, nor any act or acts of the Parties, shall be deemed to create any relationship between the Lessor and the Lessee other than the relationship of landlord and tenant.

Section 9.8 No Merger.

There shall be no merger of this Lease or any interest in this Lease nor of the leasehold estate created by this Lease, with the fee estate in the Land, by reason of the fact that this Lease or such interest in the Lease, or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Land, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created by this Lease may be conveyed or mortgaged in a leasehold mortgage to a leasehold mortgagee who shall hold the fee estate in the Land or any interest of the Lessor under this Lease.

Section 9.9 Gender and Number.

Words of any gender used in this Lease shall be held to include any other gender, and any words in the singular number shall be held to include the plural (and vice versa), when the sense requires.

Section 9.10 Titles.

The titles and article or paragraph headings are inserted only for convenience, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provisions to which they refer.

Section 9.11 Severability.

If any provision of this Lease or the application of any provision to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 9.12 Applicable Law and Venue.

This Lease shall be governed by and construed in accordance with the laws of the State of California. 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, or where otherwise appropriate, exclusively in the United District Court, Northern District, San Francisco, California.

Section 9.13 Costs and Attorney Fees.

Attorney fees in total amount not to exceed Five Thousand Dollars (\$5,000), shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above dollar limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this provision that neither party shall have to pay the other more than Five Thousand Dollars (\$5,000) for attorney fees arising out of an action, or actions, to enforce the provisions of this Agreement.

Section 9.14 Mediation.

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation with thirty days (30) days of a request, and such mediation shall be limited to one (1) day of mediation. The mediator shall be agreed to by the mediating parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation (other than attorneys' fees of each party) shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties, but not more than sixty (60) days from when such process is commenced, unless the maximum time is extended by mutual written agreement executed by both parties.

Section 9.15 Litigation.

Lessee may at the reasonable request testify at City's request, if litigation is brought against City in connection with this Agreement, to the extent the Lessee is considered a material witness to

the action being litigated. Unless the action is brought by Lessee, or is based upon Lessee's wrongdoing, City shall compensate Lessee for preparation for all reasonable attorneys' fees, and for preparation of testimony and travel at Lessee's standard hourly rates at the time of actual testimony.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Lease effective as of the day and year first above written.

LESSOR:

CITY OF SAN MATEO, a California charter city

By: _____

Name: Drew Corbett

Its: City Manager

Approved to as form and legality

By: _____
Gabrielle Whelan, Assistant City Attorney

LESSEE:

MP Downtown San Mateo Associates, L.P., a
California limited partnership

By: MP Downtown San Mateo, LLC, a
California limited liability company, its
General Partner

By: Mid-Peninsula Baker Park, Inc.,
a California nonprofit public benefit
corporation, its Manager

By:

Jan M. Lindenthal,
Assistant Secretary

EXHIBIT A-1

LEGAL DESCRIPTION OF 480 EAST 4th AVENUE

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

All of Block 15, as shown on Parcel Map No. 324, filed in the Office of the County Recorder of San Mateo County, State of California, on February 7, 1991 in Book 64 of Parcel Maps at Page(s) 52 and 53.

APN: 034-183-060

JPN: 034-018-183-01A

034-018-183-02A

034-018-183-05A

EXHIBIT A-2

LEGAL DESCRIPTION OF AIRSPACE ABOVE ADJACENT PUBLIC STREET

The final height, width, and location of the pedestrian bridge may change by no more than five (5) feet when the construction drawings are prepared.

PART I

THREE-DIMENSIONAL PEDESTRIAN BRIDGE OVERCROSSING EASEMENT

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

Being a portion of East 5th Avenue, a City street 60 feet wide, between Railroad Avenue and South Claremont Street, as shown on that certain Parcel Map, entitled Parcel Map No. 324, recorded in Book 64 of Parcel Maps, at Pages 52 and 53, official records of San Mateo County, more particularly described as follows:

COMMENCING at the Easterly most corner of Block 15 of the Town of San Mateo, as said block is shown on the above-referenced Parcel Map, said corner being also the intersection of the Southwesterly sideline of South Claremont Street and the Northwesterly sideline of East 5th Avenue;

Thence leaving said Easterly most corner, and along said Northwesterly sideline, South 48°30'30" West, 139.50 feet to the **TRUE POINT OF BEGINNING**, called Point #1 for the purposes of this description;

Thence leaving Point #1 and said Northwesterly sideline, South 41°29'30" East, 60.00 feet to Point #2 at the Southeasterly sideline of East 5th Avenue;

Thence along said Southeasterly sideline, South 48°30'30" West, 14.50 feet, to Point #3;

Thence leaving said sideline, North 41°29'30" West, 60.00 feet to Point #4 on said Northwesterly sideline of E. 5th Avenue;

Thence along said sideline, North 48°30'30" East, 14.50 feet to said Point #1 and the **TRUE POINT OF BEGINNING** of this description.

Containing an area of 870 square feet, more or less, and being a three dimensional easement 14.29 feet high, for which the base elevation at Point #1 and Point #4 is 160.77 feet, and the base elevation at Point #2 and Point #3 is 165.50 feet.

The benchmark used to establish these elevations is San Mateo City Benchmark No. 033-004, a ram set nail and waster set in the top of curb at the Northeasterly of the intersection of B Street and 5th Avenue, City of San Mateo: Elevation = 125.28 feet (San Mateo datum + 100 feet).

As shown on PART II attached hereto and made a part hereof.

This legal description was prepared by me or under my direct supervision in conformance with the requirements of the Professional Land Surveyors Act.



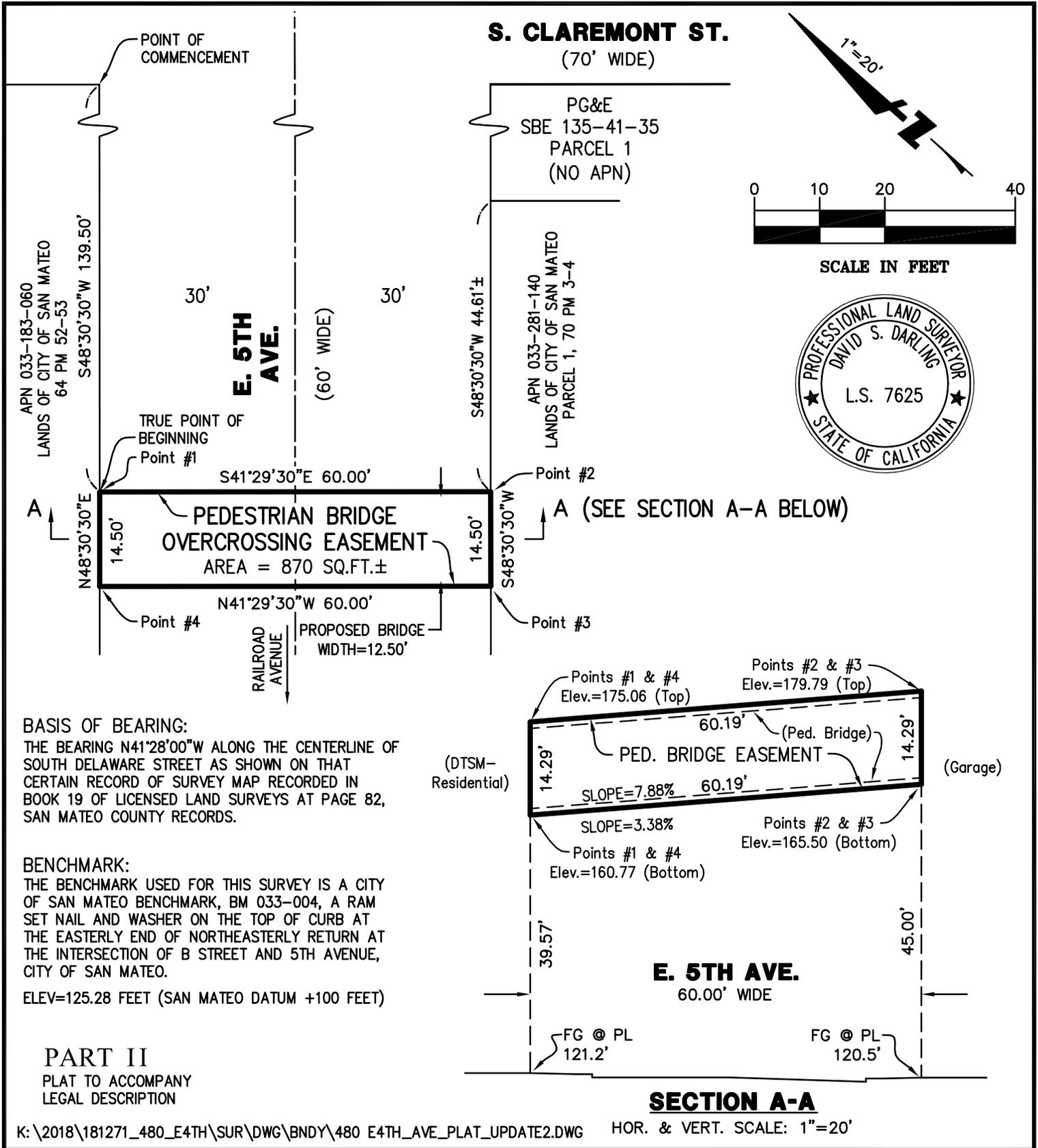
David Darling, L.S. 7625

BKF Engineers

7-17-2020

Dated





BASIS OF BEARING:
 THE BEARING N41°28'00"W ALONG THE CENTERLINE OF SOUTH DELAWARE STREET AS SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP RECORDED IN BOOK 19 OF LICENSED LAND SURVEYS AT PAGE 82, SAN MATEO COUNTY RECORDS.

BENCHMARK:
 THE BENCHMARK USED FOR THIS SURVEY IS A CITY OF SAN MATEO BENCHMARK, BM 033-004, A RAM SET NAIL AND WASHER ON THE TOP OF CURB AT THE EASTERLY END OF NORTHEASTERLY RETURN AT THE INTERSECTION OF B STREET AND 5TH AVENUE, CITY OF SAN MATEO.
 ELEV=125.28 FEET (SAN MATEO DATUM +100 FEET)

PART II
 PLAT TO ACCOMPANY
 LEGAL DESCRIPTION

K:\2018\181271_480_E4TH\SUR\DWG\BNDY\480 E4TH_AVE_PLAT_UPDATE2.DWG

HOR. & VERT. SCALE: 1"=20'



1730 N. FIRST STREET
 SUITE 600
 SAN JOSE, CA 95112
 408-467-9100
 www.bkf.com

Subject PED. BRIDGE OVERCROSSING ESMT.
E. 5TH AVE., SAN MATEO, CA
 Job No. 20181271 DTSM-Residential
 By DSD Date 7-17-2020 Chkd. DSD
 SHEET 1 OF 1

EXHIBIT B

PERMITTED ENCUMBRANCES

1. Deed of trust, regulatory agreement and other documents related to the City Loans.
2. Documents securing, related to or evidencing one or more Other Loans: (a) related to the construction of the Project, permanent financing of the project, a refinance of such construction or permanent financing; or (b) that will otherwise benefit the Project

EXHIBIT C

DIAGRAM DESCRIPTION OF PUBLIC ACCESS AREA

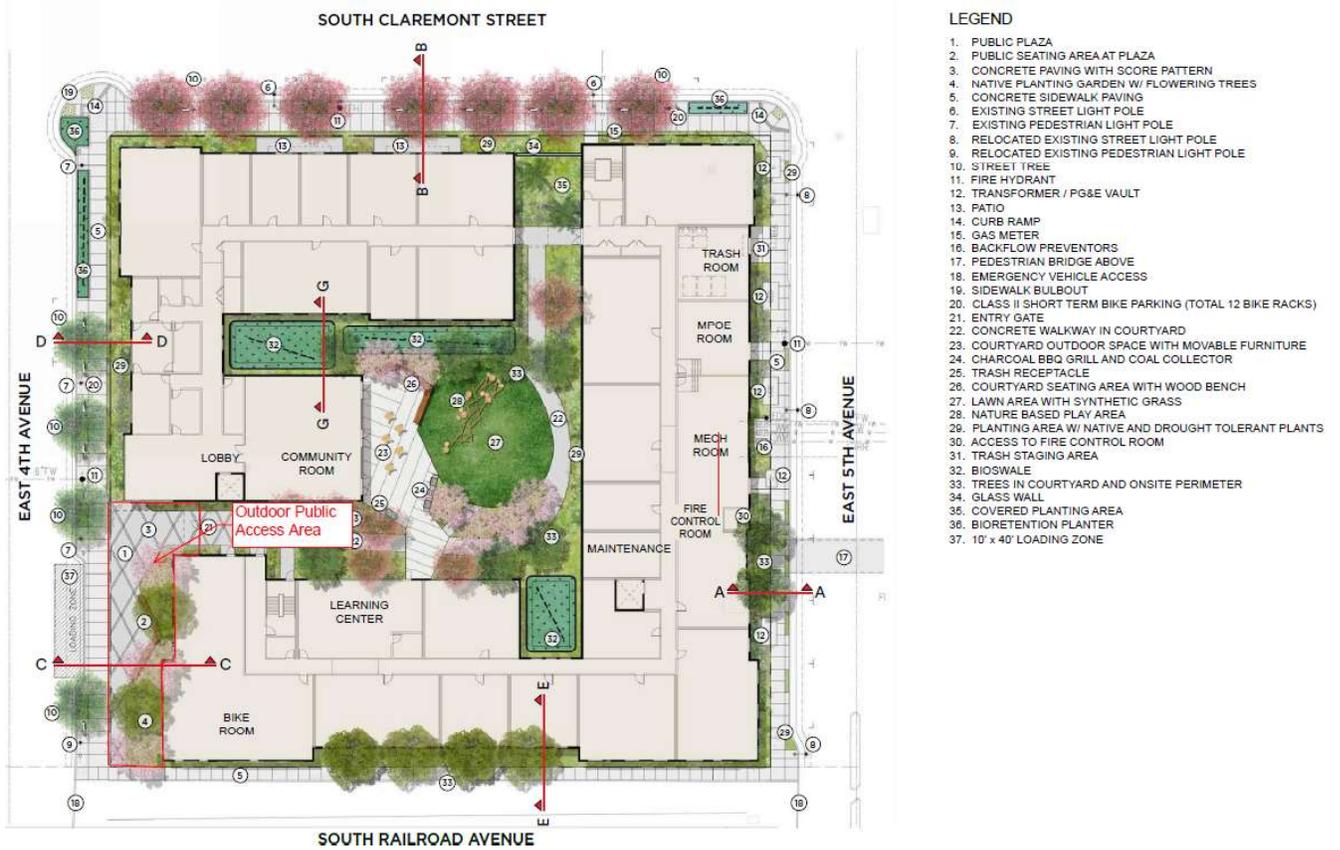


EXHIBIT D
EXCEPTIONS TO TITLE

EXHIBIT F

FORM OF GARAGE LICENSE AGREEMENT

GARAGE LICENSE AGREEMENT
(Garage Improvements)

THIS GARAGE LICENSE AGREEMENT (the "Agreement") is dated for reference _____, 20__ ("Effective Date") by and between the City of San Mateo, a California charter city (the "City"), and MP Downtown San Mateo Associates, L.P., a California limited partnership(the "Licensee").

RECITALS

A. City is the fee owner of that certain real property located at 400 East 5th Avenue, in City of San Mateo, County of San Mateo, California, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. The City and the Licensee desire for Licensee to construct no less than six hundred ninety-six parking spaces (696) (the "Garage Improvements"). The Garage Improvements shall be owned, maintained and operated by the City.

C. The parties desire to enter into this Agreement to establish the terms and conditions on which the Licensee may enter onto the Property in order for the Garage Improvements to be constructed on the Property.

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which are hereby acknowledged, City and Licensee hereby agree as follows:

1. Definitions. The following terms, as used herein, shall be defined as follows:
 - (a) "Agents" means the agents, employees, the Contractor and subcontractors of Licensee.
 - (b) "City Council" means the City Council of the City of San Mateo.
 - (c) "City Event of Default" has the meaning set forth in Section 5.1.
 - (d) "Contractor" means the licensed general contractor retained by the Licensee to construct the Garage Improvements.
 - (e) "Construction Plans" means all construction documentation upon which Licensee and the Contractor, shall rely in building each and every part of the Garage Improvements and shall include, but not necessarily be limited to, architectural drawings, final elevations, building plans and specifications (also known as "working drawings").
 - (f) "Development" means the Property and the Garage Improvements.

(g) "Garage Easement Agreement" means that easement agreement between the City and Licensee dated and recorded as of the Effective Date, whereby City has granted an appurtenant easement, for the term of the Ground Lease, against the Property for no less than 164 parking spaces to benefit the Residential Property.

(h) "Ground Lease" means the ground lease between the City and Licensee dated as of the Effective Date, whereby Licensee has leased the Residential Property from the City.

(i) "Hazardous Materials" means:

(1) Any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;

(2) Any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;

(3) Any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq.), Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and

(4) Any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Development.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, operation, or maintenance, of residential developments, parking garages, or typically used in office, residential, or parking garage related activities; or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Development, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

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

(k) "Licensee Event of Default" has the meaning set forth in Section 5.2.

(l) "Residential Property" means that certain real property located at 480 East 4th Avenue, in City of San Mateo, County of San Mateo, California. The City and Licensee desire for Licensee to develop the "Residential Improvements", consisting of approximately one hundred and sixty four (164) units of multi-family rental housing, on the Residential Property to be made available to and occupied by moderate and low income households, including two manager units, and including all common areas, amenities, plans, entitlements, appurtenances, improvements easements, buildings and fixtures associated with the Residential Property.

(m) "Term" has the meaning set forth in Section 3.

(n) All other defined terms used in this Agreement shall be defined where first appearing in this Agreement.

2. Construction of the Garage Improvements.

2.1 Construction Pursuant to Plans. Unless modified by operation of Section 2.4, the Garage Improvements shall be constructed substantially in accordance with the Construction Plans and the terms and conditions of the land use permits and approvals and building permits, including any variances granted for the Garage Improvements

2.2 Commencement of Garage Improvements. Licensee shall commence construction of the Garage Improvements no later than thirty (30) days after the Effective Date.

2.3 Completion of Garage Improvements. Licensee shall diligently prosecute to completion the construction of the Garage Improvements no later than thirty-six (36) months following the commencement of construction.

2.4 Change in Construction of Garage Improvements.

(a) If Licensee desires to make any material change in the Garage Improvements which are not substantially consistent with the Construction Plans, Licensee shall submit the proposed change to the City for its approval. No change which is required for compliance with building codes or other government health and safety regulations shall be deemed material. If the Garage Improvements, as modified by any such proposed change, will conform to the requirements of this Agreement, and the Construction Plans, the City shall approve the change by notifying Licensee in writing. For purposes of this Section, a material change shall mean any change which is expected to substantially alter the external appearance of the Development (including any color change) or which is expected to result in an individual change of One Hundred Thousand Dollars (\$100,000) or a cumulative change of Two Hundred and Fifty Thousand Dollars (\$250,000), or more, in the cost of construction of the Garage Improvements.

(b) Unless a proposed change is rejected by the City within fifteen (15) working days, it shall be deemed approved. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect. If the City rejects a proposed change, it shall provide Licensee with the specific reasons therefor.

(c) The approval of changes in the Construction Plans by the City pursuant to this Section shall be in addition to any approvals required to be obtained from the City pursuant to building permit requirements. Approval of changes in the Construction Plans by the City shall not constitute approval by the City and shall in no way limit the City's discretion in approving changes to the Construction Plans.

2.5 Certificate of Completion; Expiration of Agreement. Within thirty (30) days after completion of the construction of the Garage Improvements, in accordance with those provisions of this Agreement relating solely to the obligations of Licensee to construct the Garage Improvements (including the dates for beginning and completing construction of the Garage Improvements), the City shall provide an instrument so certifying the completion of the construction of the Garage Improvements (the "Garage Improvements Certificate of Completion"). Concurrently with the issuance of the Garage Improvements Certificate of Completion this Agreement shall terminate, and the issuance of the Garage Improvements Certificate of Completion shall serve to demonstrate acceptance by the City of the Garage Improvements "as is". The Garage Improvements Certificate of Completion shall be a conclusive determination that the covenants in this Agreement with respect to the obligations of Licensee to construct the Garage Improvements have been met. In conjunction with the issuance of the Garage Improvements Certificate of Completion, Licensee shall deliver to the City: (i) a complete set of "as built" drawings of the Garage Improvements (in a form mutually acceptable to the parties); (ii) all manufacturers' warranties, manuals, and other documentation, within the possession of Licensee, necessary for the City's use and occupancy of the Garage Improvements; and (iii) any other documents reasonably required by the City's standard process and protocol for the acceptance of public improvements (if any). Notwithstanding anything to the contrary contained herein, City shall have no claim against Licensee arising out of or related to the Garage Improvements that have been accepted pursuant to this Section, and releases Licensee from any and all responsibility or liability whatsoever arising out of, relating to or connected to the Garage Improvements after the date of issuance of the Garage Improvements Certificate of Completion (whether arising before or after such date); provided, however, that the City shall retain the right of recourse against any security or warranties assigned to City under terms and conditions set forth herein. In addition, upon issuance of the Garage Improvements Certificate of Completion, City shall indemnify and defend Licensee its officers, directors, employees, agents, related and affiliated entities, lenders and investors (all of the foregoing, collectively, the "Licensee Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation reasonable attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "Claims"), including without limitation, Claims relating to property damage, personal injury, or death, to the extent arising out of, resulting from or connected with City's operation, use, security, safety, maintenance, repair, replacement, reconstruction, or removal of the Garage Improvements, except to the extent arising from: (A) Licensee's use of the Garage Improvements pursuant to the Garage Easement Agreement; and (B) the gross

negligence or willful misconduct of the Licensee Indemnitees. 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.

2.6 Compliance with Applicable Law; Prevailing Wage Requirement.

(a) Licensee shall cause construction of the Garage Improvements to be performed in compliance with:

(1) All applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter.

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

(b) Licensee shall pay and shall cause the Contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). In addition, as applicable, Licensee shall cause its respective contractors and subcontractors in the construction of the Development to do all the following: (1) all calls for bids, bidding materials and the construction contract documents for the Development must specify that (A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Development unless registered with the DIR pursuant to Labor Code Section 1725.5, and (B) the Development is subject to compliance monitoring and enforcement by the DIR; (2) Licensee is required to provide the City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>); (3) Licensee shall cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; or (4) Licensee shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner. Licensee shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Licensee, the Contractor and subcontractors) to pay prevailing wages in accordance with the terms of this Agreement as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations

of the DIR in connection with the construction of the Development. The requirements in this Subsection survive the expiration of this Agreement.

(c) Licensee shall defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Licensee, its contractor and subcontractors) to pay prevailing wages in accordance with this Agreement as determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations or comply with the other applicable provisions of Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the Department of Industrial Relations in connection with the construction, pursuant to this Agreement, of the Development, in regards to the Property only for actions taken prior to the expiration of this Agreement, and shall indemnify and hold the City harmless against any damages, compensation, fines, penalties or other amounts resulting from the successful prosecution of such claim.

(d) Licensee shall construct the Development to comply with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act, Section 504 of the Construction Act of 1973, Title II and/or Title III of the Americans with Disabilities Act of 1990, Title 24 of the California Code of Regulations and the Uniform Federal Accessibility Standards.

2.7 Mechanics Liens, Stop Notices, and Notices of Completion

(a) If any claim of lien is filed against the Property or the Garage Improvements or a stop notice is served on the City or any other lender or other third party in connection with the Development, then Licensee shall, within thirty (30) days after such filing or service, either pay or fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety acceptable to the City in sufficient form and amount, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(b) If Licensee fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Licensee's expense. Alternatively, the City may require Licensee to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Licensee.

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

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

2.9 Inspections. Licensee shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the City and by public authorities during reasonable business hours upon forty-eight (48) hours' written notice for the purposes of determining compliance with this Agreement.

2.10 Information. Licensee shall provide any information reasonably requested by the City in connection with the Development.

2.11 Records.

(a) Licensee shall maintain complete, accurate, and current records pertaining to its interests in the Development for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records upon reasonable notice to Licensee. Records must be kept accurate and current.

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

3. Term. The term of this Agreement (the "Term") shall commence upon the Effective Date and shall terminate upon issuance of the Garage Improvements Certificate of Completion, as further provided in Section 2.5.

4. License. Subject to the conditions, stipulations and provisions set forth herein, City hereby grants a non-exclusive license to Licensee and its Agents to enter upon the Property during the Term to construct the Garage Improvements, and for no other purpose. Nothing in this Agreement shall be construed as a grant of title or any interest in the Property.

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

5.1 Default of City. The following event shall constitute a City Event of Default and a basis for Licensee to take action against the City:

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

(b) Upon the happening of any of the above-described events, Licensee 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 completes such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then Licensee shall be afforded the following remedies: (1) terminating in writing this Agreement (provided, however, that those provisions of this Agreement that recite that they survive termination of this Agreement shall all remain in full force and effect) the Ground Lease, and/or Garage Easement Agreement; and (2) prosecuting an action for specific performance and for damages.

5.2 Default of Licensee. The following events each constitute a Licensee Event of Default and a basis for the City to take action against Licensee:

(a) Licensee constructs or attempts to construct the Garage Improvements in violation of Sections 2.1 – 2.5.

(b) A court having jurisdiction shall have made or entered any decree or order (1) adjudging Licensee to be bankrupt or insolvent, (2) approving as properly filed a petition seeking its reorganization of Licensee or seeking any arrangement for Licensee under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of Licensee in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of Licensee, if any such decree or order described in clauses (1) to (4), 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 5.2(b) as well; or Licensee 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 (1) to (4), inclusive.

(c) Licensee 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 5.2(c) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution.

(d) Licensee shall have been dissolved or shall have voluntarily suspended its business.

(f) Upon the happening of any of the above-described events, the City shall first notify Licensee in writing of its purported breach, failure or act above described, giving

Licensee in writing sixty (60) days from receipt of such notice to cure, or, if cure cannot be accomplished within said sixty (60) days, to commence to cure such breach, failure, or act. In the event Licensee fails to cure within said sixty (60) days, or if such breach is of a nature that it cannot be cured within sixty (60) days, Licensee fails to commence to cure within said sixty (60) 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) Termination of this Agreement, the Ground Lease and/or Garage Easement Agreement by written notice to Licensee.
- (2) Prosecuting an action for damages (but specifically excluding lost profits, special damages and consequential damages) or specific performance; and
- (3) Any of the remedies specified in this Agreement.

5.3 Right to Cure at Licensee's Expense. The City shall have the right to cure any monetary default by Licensee under a loan secured by the Residential Property or the Residential Improvements in connection with the Development. However, if Licensee 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. Licensee agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Licensee upon demand therefor, together with interest thereon at the lesser of the rate of five percent (5%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.

5.4 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.

5.5 Waiver of Terms and Conditions. No waiver of any default or breach by Licensee 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 in this Agreement 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 Licensee 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.

6. Hazardous Materials.

6.1 No Hazardous Materials Activities. Licensee hereby represents and warrants to the City that, at all times from and after the Effective Date until the expiration of the Term, Licensee shall not cause or permit the Property or the Garage 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, except to the extent such Hazardous Materials were present on or about the Property prior to the Effective Date.

6.2 Hazardous Materials Laws. Licensee hereby represents and warrants to the City that, at all times from and after the Effective Date until the expiration of this Agreement, Licensee shall be in material compliance with and cause the Property, and the Garage Improvements thereon to be in material compliance with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions. Upon notice from the City to Licensee that Licensee not in compliance with Hazardous Material Laws, Licensee shall be given a reasonable period to cure, and not less than thirty (30) days, given the nature, context, and practicability of curing the material non-compliance.

6.3 Notices. Licensee hereby represents and warrants to the City that, at all times from and after the Effective Date, Licensee shall immediately notify the City in writing of: (i) the discovery of any Hazardous Materials on or under the Property, not previously disclosed by City; (ii) any knowledge by Licensee that the Property does not comply with any Hazardous Materials Laws; and (iii) any claims or actions pending or threatened against Licensee, the Property, or the Garage Improvements by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws, or arising from claims of nuisance, or damage to property or personal injury relating to Hazardous Materials associated with the Property or the Garage Improvements thereon (collectively "Hazardous Materials Claims"). 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 Licensee for any claims or actions arising from activities related to Hazardous Materials on the Property occurring after the Effective Date, except as otherwise provided by this Agreement.

6.4 Remedial Action. Without the City's prior written consent, which shall not be unreasonably withheld or delayed, Licensee 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.

7. General Indemnification.

7.1 Licensee. Licensee agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its elected and appointed officials, employees, and agents, from all suits, actions, claims, causes of action, administrative proceeding, arbitrations, enforcement actions, costs, demands, judgments and liens to the extent arising out of Licensee's performance or non-performance under this Agreement, or to the extent arising out of acts or omissions of any of Licensee's contractors, subcontractors, or persons

claiming under any of the aforesaid, except to the extent directly caused by the City's or its elected and appointed officials, employees, and agents 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.

7.2 City. The City agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Licensee) Licensee, its officers and board members, employees, and agents, from all suits, actions, claims, causes of action, administrative proceeding, arbitrations, enforcement actions, costs, demands, judgments and liens to the extent arising out of the City's performance or non-performance under this Agreement, or to the extent arising out of acts or omissions of any of the City's contractors, subcontractors, or persons claiming under any of the aforesaid, except to the extent directly caused by Licensee's or its officers and board members, employees, and agents 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.

8. Insurance Requirements.

8.1 Required Coverage. Licensee shall maintain and keep in force, at Licensee's sole cost and expense, the following insurance applicable to the Development from the Effective Date until the termination of this Agreement upon the completion of construction and issuance of the Garage Improvements Certificate of Completion.

(a) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

(b) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence and an umbrella policy of \$10,000,000. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(c) Automobile Liability: Licensee shall cause its Contractor to maintain Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$2,000,000 per accident for bodily injury and property damage and an umbrella policy of \$10,000,000.

(d) Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

(e) Licensee shall cause its Contractor to maintain Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves

environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

8.3 Additional Insurance Provisions.

(a) **Broader Coverage:** If the Licensee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(b) **Self-insured retentions:** Self-insured retentions for insurance required herein must be declared to and approved by the City. At the option of the City, either: the Licensee shall cause the insurer to reduce or eliminate such self-insured retentions as respects the City, its elected and appointed officials, employees, and agents; or the Licensee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

(c) **Endorsements:** The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) The City, its elected and appointed officials, employees, and agents are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Licensee. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

(2) For any claims related to this project, the Licensee's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the Licensee's insurance and shall not contribute with it.

(3) Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City.

(d) **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

(e) Waiver of Subrogation: Licensee hereby agrees to waive rights of subrogation which any insurer of Licensee may acquire from Licensee by virtue of the payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Licensee, its employees, or agents.

(f) Verification of Coverage: Licensee shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

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

9. Assignment. Licensee shall not assign this Agreement or any interest herein without the prior written consent of the City in its reasonable discretion. In connection with a request for assignment, there shall be submitted to the City for review all instruments and other legal documents proposed to effect any such assignment. If a requested assignment is approved by the City such approval shall be indicated to Licensee in writing. Such approval shall be granted or denied by the City within ninety (90) days of receipt by the City of Licensee's request for approval of an assignment. In the event the City does not respond either granting or denying the request within ninety (90) days the request shall be deemed approved. Upon such approval, if granted, the transferee, by an instrument in writing prepared by the City shall expressly assume the obligations of Licensee under this Agreement and agree to be subject to the conditions and restrictions to which Licensee is subject arising during this Agreement. Notwithstanding the foregoing, the City hereby approves the assignment of this Agreement from Licensee to a limited liability company or limited partnership, the managing member or partner of which is a nonprofit public benefit corporation or limited liability company affiliated with MidPen Housing Corporation or.

10. 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, or where otherwise appropriate, exclusively in the United District Court, Northern District, San Francisco, California.

11. Notices. Formal notices, demands, and communications between the City and Licensee 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 Licensee as follows:

If to Licensee:

MP Downtown San Mateo Associates, L.P.
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: President and Chief Executive Officer

If to City:

City of San Mateo
320 W. 20th Avenue
San Mateo, CA 99403
Attn: City Manager

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.

12. Non-Liability.

12.1 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City or the City shall be personally liable to Licensee, 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 Licensee or successor or on any obligation under the terms of this Agreement.

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

13. 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.

14. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto. 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.

15. Modification. This Agreement may not be modified, amended or otherwise changed in any manner, except by a written amendment executed by both the City and Licensee, or their respective successors in interest.

16. Controlling Laws. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

17. No Third Party Beneficiaries. The rights, benefits and obligations conferred hereunder are for the benefit of the parties hereto and not for the benefit of any third party.

18. Mediation. Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation with thirty days (30) days of a request, and such mediation shall be limited to one (1) day of mediation. The mediator shall be agreed to by the mediating parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation (other than attorneys' fees of each party) shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties, but not more than sixty (60) days from when such process is commenced, unless the maximum time is extended by mutual written agreement executed by both parties.

19. Litigation. Licensee may at the reasonable request testify at City's request, if litigation is brought against City in connection with this Agreement, to the extent the Licensee is considered a material witness to the action being litigated. Unless the action is brought by Licensee, or is based upon Licensee's wrongdoing, City shall compensate Licensee for preparation for all reasonable attorneys' fees, and for preparation of testimony and travel at Licensee's standard hourly rates at the time of actual testimony.

20. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the specific subject matter hereof, and all prior negotiations, agreements and understandings among Licensee and City with respect to the specific subject matter hereof are merged into this Agreement.

21. Counterparts. This Agreement may be executed in counterparts, all of which together constitute one and the same agreement.

IN WITNESS WHEREOF, Licensee and the City have executed this Agreement as of the Effective Date.

LICENSEE:

MP Downtown San Mateo Associates, L.P., a
California limited partnership

By: MP Downtown San Mateo, LLC, a
California limited liability company, its
General Partner

By: Mid-Peninsula Baker Park, Inc.,
a California nonprofit public benefit
corporation, its Manager

By:

Jan M. Lindenthal, Assistant Secretary

CITY:

CITY OF SAN MATEO, a California charter city

By:

Drew Corbett, City Manager

Approved to as form and legality

By:

Gabrielle Whelan, Assistant City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The Property is situated in the County of San Mateo, City of San Mateo, State of California, and is described as follows:

Parcel 1 as shown on Parcel Map No. 356, filed September 25, 1997, Book 70, of Parcel Maps, Pages 3 and 4, San Mateo County Records.

APN: 033-281-140

JPN: 033-028-281-12.01

EXHIBIT G

FORM OF GARAGE EASEMENT AGREEMENT

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of San Mateo
320 W. 20th Avenue
San Mateo, CA 99403

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GARAGE EASEMENT AGREEMENT

This Garage Easement Agreement (this “Agreement”) is entered into effective as of _____, 20__ (“Effective Date”) by and between the City of San Mateo, a municipal corporation (the “City”), and MP Downtown San Mateo Associates, L.P., a California limited partnership (“Grantee”). City and Grantee are hereinafter collectively referred to as the “Parties”.

RECITALS

A. City is the fee owner of that certain real property located at 400 East 5th Avenue, in City of San Mateo, County of San Mateo, California., more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Garage Property”).

B. Pursuant to that certain Ground Lease dated as of _____, 20__ by and between the City and Grantee (the “Ground Lease”), the City ground leased to Grantee that certain real property located at 480 East 4th Avenue, in City of San Mateo, County of San Mateo, California, more particularly described in Exhibit B attached hereto and incorporated herein by this reference (the “Residential Property”).

C. The City and Grantee desire for Grantee to develop approximately two hundred twenty-five _____ (225) units of multi-family rental housing, including two (2) unrestricted manager units on the Residential Property to be made available to and occupied by low income households, and including all common areas, amenities, plans, entitlements, appurtenances, improvements easements, buildings and fixtures associated with the Residential Property.

D. Pursuant to that certain Disposition, Development and Loan Agreement dated as of _____, 20__ by and between the City and Grantee (the “Disposition, Development and Loan Agreement”), Grantee agreed to construct on the Garage Property no less than _____ (____) parking spaces (the “Garage Improvements”). The Garage Property and the Garage Improvements are collectively referred to herein as (the “Garage”). The Garage will contain up to ____ of public parking spaces (of which two hundred thirty five (235) are replacing existing spaces) in an area of the Garage to be used by the City and its tenants, employees, licensees, guests, invitees, successors and assigns (the “City Parties”) and the general public (the

“Public Parking Area”), and one hundred sixty-four (164) spaces in the Garage more particularly described in Exhibit C attached hereto and incorporated herein by this reference (the “Residential Parking Area”) are to be reserved solely for the use of Grantee and its tenants, employees, licensees, guests, invitees, successors and assigns of the Residential Project (the “Grantee Parties”).

E. Pursuant to that certain Garage Operation and Maintenance Agreement dated as of _____, 20__ by and between the City and Partnership (the “Garage O & M Agreement”) the Parties have established the responsibility for maintenance and operation of the Garage and the allocation of responsibility for Garage operating and maintenance expenses between the City and Partnership.

F. The Parties desire to enter into this Agreement to establish the easements under which the Grantee and the Grantee Parties may access and use the Residential Parking Area.

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which are hereby acknowledged, City and Grantee hereby agree as follows:

1. Definitions. The following terms, as used herein, shall be defined as follows:

(a) “Garage Improvements Certificate of Completion” shall mean the instrument provided by the City certifying the completion of the construction of the Garage Improvements, as further set forth in the Garage License Agreement.

(b) All other defined terms used in this Agreement shall be defined where first appearing in this Agreement.

2. Grant of Easements. Subject to the terms and conditions set forth in the Operation and Maintenance Agreement, the City hereby grants to Grantee and the Grantee Parties the following appurtenant easements:

(a) Parking Easement. A perpetual, irrevocable, exclusive easement in, on and over the Residential Parking Area for the parking of the vehicles of Grantee and the Grantee Parties; and

(b) Access Easement. A perpetual, irrevocable, non-exclusive easement for vehicular and pedestrian access to and from the Residential Parking Area in, on and over that part of the Garage more particularly described in Exhibit D attached hereto and incorporated herein by this reference (the “Garage Access Area”).

The grant of the foregoing easements by the City shall bind and burden the Garage Property which shall, for the purpose of this Agreement, be the servient tenement. The grant of the foregoing easements to Grantee and the Grantee Parties shall benefit the Residential Property which shall, for the purpose of this Agreement, be the dominant tenement.

3. Term. The term of this Agreement (the “Term”) shall commence upon the Effective Date and shall terminate upon the termination of the Ground Lease. Notwithstanding the foregoing, City and Grantee hereby acknowledge and agree that this Agreement shall be subject to the terms of the Garage License Agreement until issuance of the Garage Improvements Certificate of Completion, at which time such Garage License Agreement shall terminate.

4. Indemnification.

4.1 Grantee. Grantee agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its elected and appointed officials, employees, and agents, from all suits, actions, claims, causes of action, administrative proceeding, arbitrations, enforcement actions, costs, demands, judgments and liens to the extent arising out of Grantee's performance or non-performance under this Agreement, or to the extent arising out of acts or omissions of any of Grantee’s contractors or subcontractors except to the extent directly caused by the City's or its elected and appointed officials, employees, and agents 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.

4.2 City. The City agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Grantee) Grantee, its officers and board members, employees, and agents, from all suits, actions, claims, causes of action, administrative proceeding, arbitrations, enforcement actions, costs, demands, judgments and liens to the extent arising out of the City's performance or non-performance under this Agreement, or to the extent arising out of acts or omissions of any of the City's contractors or subcontractors, except to the extent directly caused by Grantee or its officers and board members, employees, and agents 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.

5. Insurance.

5.1 Coverage for the duration of the easement shall be at least as broad as:

(a) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations property damage, bodily injury, and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project location (ISP CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(b) Workers’ Compensation insurance as required by the State of California with Statutory Limits, and Employer’s Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

(c) Property insurance against all risks of loss to any tenant improvement or betterments, at full replacement cost with no coinsurance penalty provision.

5.2 Additional Insurance Provisions.

(a) **Broader Coverage:** If the Grantee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Grantee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(b) **Self-insured retentions.** Self-insured retentions for insurance required herein must be declared to and approved by the City. At the option of the City, either: the Grantee shall cause the insurer to reduce or eliminate such self-insured retentions, as respects the City, its elected and appointed officials, employees, and agents; or the Grantee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

(c) **Endorsements.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) The City, its elected and appointed officials, employees, and agents, are to be covered as additional insureds on the CGL policy with respect to liability arising out of Grantee's use of the Garage in accordance with this Agreement. General liability coverage can be provided in the form of an endorsement to Grantee's insurance (at least as broad as ISO Form CG 20 10, CG 11 85, or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 forms if later revisions used);

(2) For any claims related to this Agreement, the Grantee's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents, shall be excess of the Grantee's insurance and shall not contribute with it.

(3) Each insurance policy required by this section shall provide that coverage shall not be canceled, except with notice to the City.

(d) **Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

(e) **Waiver of Subrogation.** Grantee hereby agrees to waive rights of subrogation which any insurer of Grantee may acquire from Grantee by virtue of the payment of any loss. Grantee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

(f) **Verification of Coverage.** Grantee shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins.

However, failure to obtain the required documents prior to Grantee's use of the Garage shall not waive Grantee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications at any time.

5. 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, or where otherwise appropriate, exclusively in the United District Court, Northern District, San Francisco, California.

6. Notices. Formal notices, demands, and communications between the City and GRANTEE 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 Grantee as follows:

If to GRANTEE: MP Downtown San Mateo Associates, L.P.
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: President and Chief Executive Officer

If to City: City of San Mateo
320 W. 20th Avenue
San Mateo, CA 99403
Attn: City Manager

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.

7. Non-Liability.

7.1 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City or the City shall be personally liable to Grantee, 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 Grantee or successor or on any obligation under the terms of this Agreement.

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

8. 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.

9. Covenants Run with the Land. The covenants and restrictions contained in this Agreement shall run with the land and be binding upon and inure to the benefit of the City and Grantee and their respective successors in title to the Garage Property and the Residential Property or any part thereof, or any interest therein.

10. Modification. This Agreement may not be modified, amended or otherwise changed in any manner, except by a written amendment executed by both the City and Grantee, or their respective successors in interest.

11. Controlling Laws. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

12. No Third Party Beneficiaries. The rights, benefits and obligations conferred hereunder are for the benefit of the parties hereto and not for the benefit of any third party.

13. Mediation. Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation with thirty days (30) days of a request, and such mediation shall be limited to one (1) day of mediation. The mediator shall be agreed to by the mediating parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation (other than attorneys' fees of each party) shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties, but not more than sixty (60) days from when such process is commenced, unless the maximum time is extended by mutual written agreement executed by both parties.

14. Litigation. Grantee may at the reasonable request testify at City's request, if litigation is brought against City in connection with this Agreement, to the extent the Grantee is considered a material witness to the action being litigated. Unless the action is brought by Grantee, or is based upon Grantee's wrongdoing, City shall compensate Grantee for preparation for all reasonable attorneys' fees, and for preparation of testimony and travel at Grantee's standard hourly rates at the time of actual testimony.

15. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the specific subject matter hereof, and all prior negotiations, agreements and understandings among Grantee and City with respect to the specific subject matter hereof are merged into this Agreement.

16. Counterparts. This Agreement may be executed in counterparts, all of which together constitute one and the same agreement.

IN WITNESS WHEREOF, GRANTEE and the City have executed this Agreement as of the Effective Date.

GRANTEE:

MP Downtown San Mateo Associates, L.P., a California limited partnership

By: MP Downtown San Mateo, LLC, a California limited liability company, its General Partner

By: Mid-Peninsula Baker Park, Inc., a California nonprofit public benefit corporation, its Manager

By: _____
Jan M. Lindenthal, Assistant Secretary

CITY:

CITY OF SAN MATEO, a California charter city

By: _____
Drew Corbett, City Manager

Approved to as form and legality

By: _____
Gabrielle Whelan, Assistant City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF GARAGE PROPERTY

The Garage Property is situated in the County of San Mateo, City of San Mateo, State of California, and is described as follows:

Parcel 1 as shown on Parcel Map No. 356, filed September 25, 1997, Book 70, of Parcel Maps, Pages 3 and 4, San Mateo County Records.

APN: 033-281-140

JPN: 033-028-281-12.01

EXHIBIT B

LEGAL DESCRIPTION OF RESIDENTIAL PROPERTY

The Residential Property is situated in the County of San Mateo, City of San Mateo, State of California, and is described as follows:

All of Block 15, as shown on Parcel Map No. 324, filed in the Office of the County Recorder of San Mateo County, State of California, on February 7, 1991 in Book 64 of Parcel Maps at Page(s) 52 and 53.

APN: 034-183-060

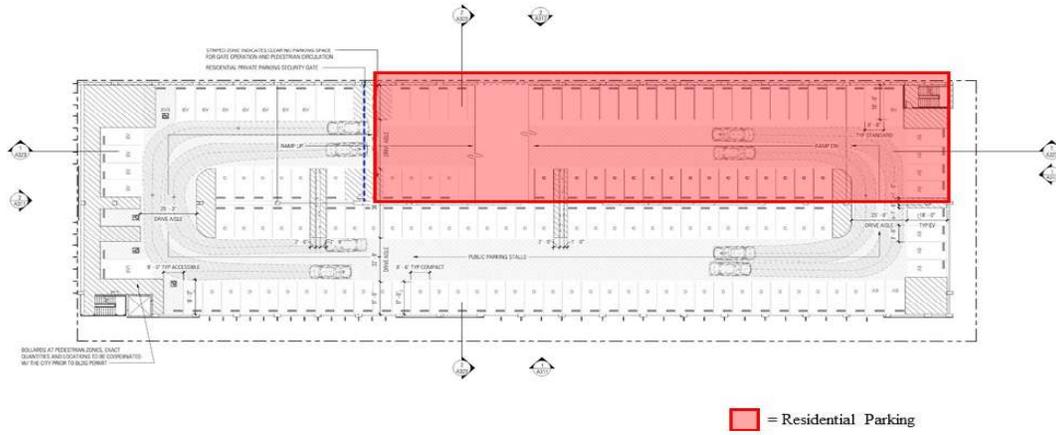
JPN: 034-018-183-01A
034-018-183-02A
034-018-183-05A

EXHIBIT C

RESIDENTIAL PARKING AREA

(The limits of the residential parking area on the fourth floor may be adjusted in accordance with the final construction drawings.)

Floor 4



Floor 5

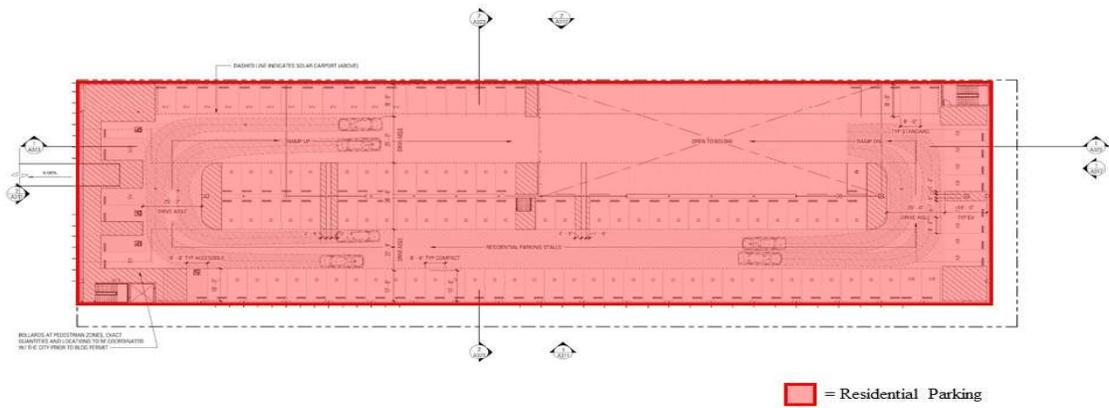
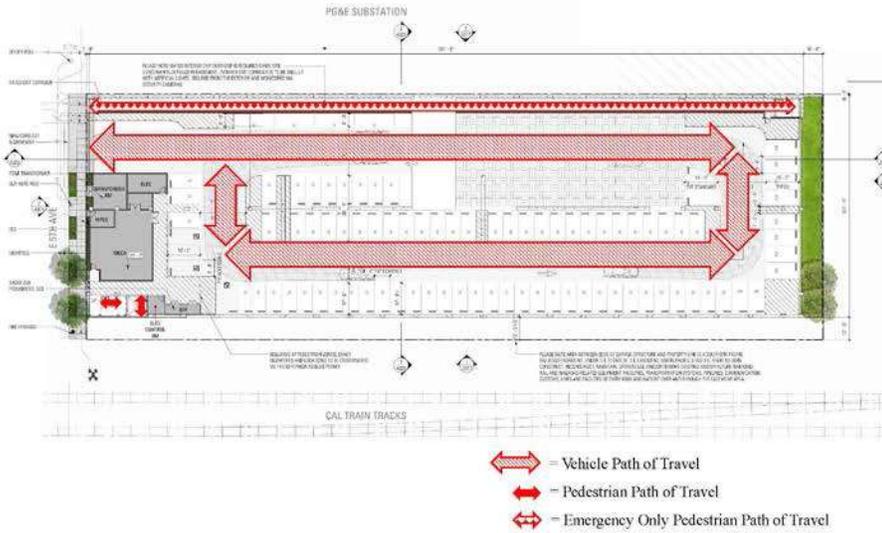


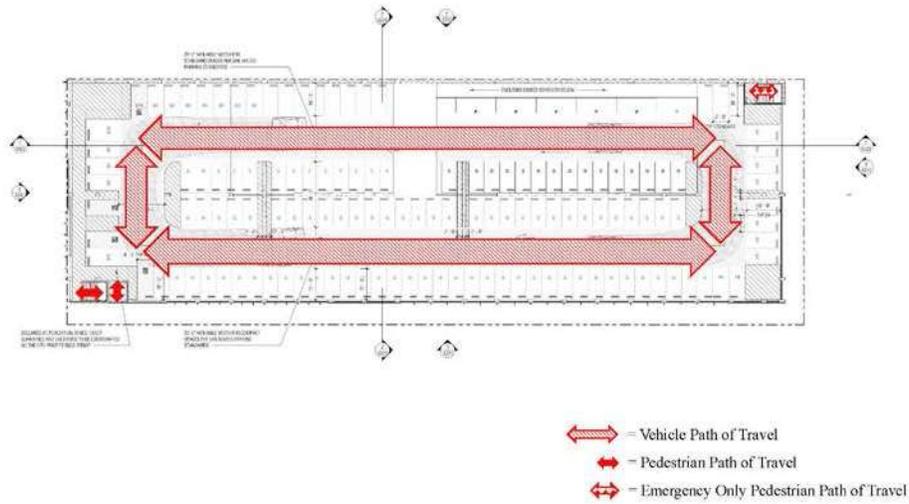
EXHIBIT D

GARAGE ACCESS AREA

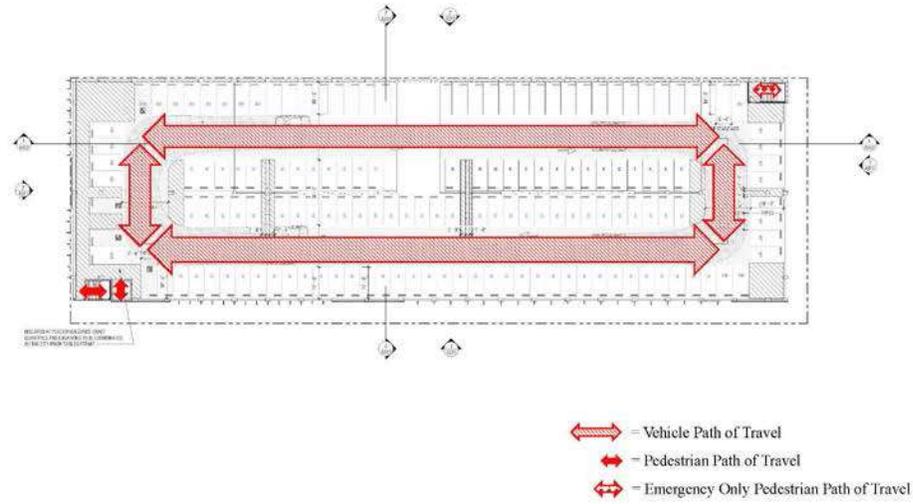
Floor 1



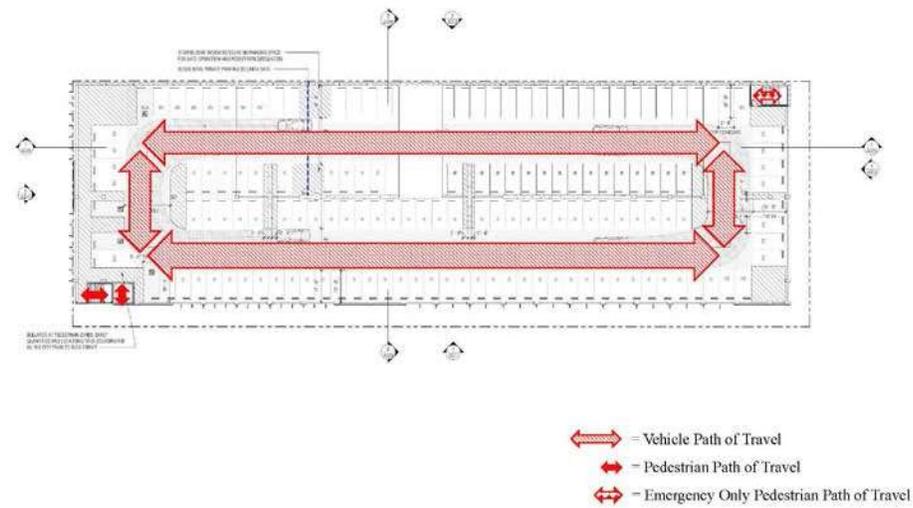
Floor 2



Floor 3



Floor 4



Floor 5

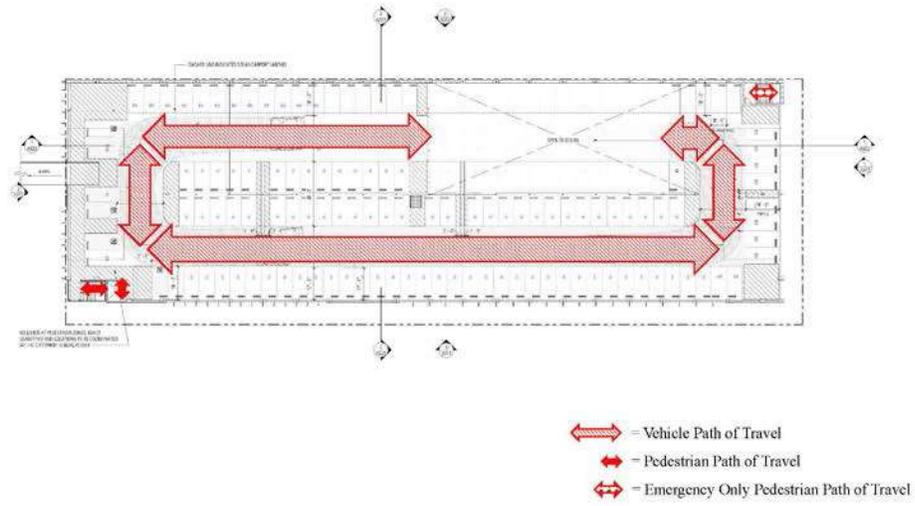


EXHIBIT H

FORM OF GARAGE MAINTENANCE AGREEMENT

GARAGE OPERATION AND MAINTENANCE AGREEMENT

This Garage Operation and Maintenance Agreement (this “Agreement”) is entered into effective as of _____, 20__ (“Effective Date”) by and between the City of San Mateo, a municipal corporation (the “City”), and MP Downtown San Mateo Associates, L.P., a California limited partnership (“Partnership”). City and Partnership are hereinafter collectively referred to as the “Parties”.

RECITALS

A. City is the fee owner of that certain real property located at 400 East 5th Avenue, in City of San Mateo, County of San Mateo, California (the “Garage Property”).

B. Pursuant to that certain ground lease dated as of _____, 20__ by and between the City and Partnership (the “Ground Lease”), the City ground leased to Partnership that certain real property located at 480 East 4th Avenue, in City of San Mateo, County of San Mateo, California (the “Residential Property”). Partnership shall develop approximately two hundred twenty-five (225) units of multi-family rental housing, including two (2) unrestricted manager units, on the Residential Property to be made available to and occupied by low-income households (the “Project”).

C. Pursuant to that certain Garage License Agreement dated as of _____, 20__ by and between the City and Partnership, Partnership agreed to construct on the Garage Property a garage structure (the “Garage”). The Garage will contain (i) 532 parking spaces in the area of the Garage more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Public Parking Area”) for the use of the City and the general public (the “City Parties”); and (ii) 164 parking spaces in the area of the Garage more particularly described in Exhibit B attached hereto and incorporated herein by this reference (the “Residential Parking Area”) solely for the use of Partnership and its tenants, employees, licensees, guests, invitees, successors and assigns of the Project (the “Partnership Parties”).

D. Pursuant to that certain garage easement agreement dated as of _____, 20__ by and between the City and Partnership (the “Garage Easement Agreement”), the City has granted to the Partnership and the Partnership Parties certain parking and access easements for access to and use of the Garage Property.

E. The Parties desire to enter into this Agreement to establish the responsibility for maintenance and operation of the Garage and the allocation of responsibility for Garage operating and maintenance expenses between the City and Partnership.

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which are hereby acknowledged, City and Partnership hereby agree as follows:

1. Definitions. The following terms, as used herein, shall be defined as follows:

- (a) "City Event of Default" has the meaning set forth in Section 6.1.
- (b) “City’s Reimbursable Obligations” means those items listed in Column III of Exhibit C attached hereto and incorporated herein by this reference (“Exhibit C”).

- (c) "Partnership's Share" means the parking count in the Residential Parking Area as share of total parking count in the Garage.
 - (d) "Hazardous Materials" means:
 - (1) Any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;
 - (2) Any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;
 - (3) Any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq.), Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and
 - (4) Any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws applicable to the Garage.
 - (5) The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, operation, or maintenance, of residential developments, parking garages, or typically used in office, residential, or parking garage related activities; or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Development, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.
 - (e) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives applicable to Hazardous Materials in, on or under the Garage or any portion thereof.
 - (f) "Partnership Event of Default" has the meaning set forth in Section 6.2.
 - (g) All other defined terms used in this Agreement shall be defined where first appearing in this Agreement.
2. Term. The term of this Agreement (the "Term") shall commence upon the date on which a certificate of occupancy is issued for the Project and shall terminate upon the ninety-ninth anniversary of such date.

3. Use.

3.1 Garage.

- (a) Use of Public Parking Area. The City and the City Parties shall use the Public Parking Area in accordance with the City's approved parking ordinances and resolutions.
- (b) Use of Residential Parking Area. The Partnership and the Partnership Parties shall use the Residential Parking Area for the parking of automobiles only. Each automobile shall park within the bounds of a single parking space. "Automobiles" shall mean any vehicles that are suitable for use on a street or roadway and which are of a size capable of fitting into a single parking space without intruding into adjoining spaces or access areas. Examples of vehicles that are not permitted to park in the Residential Parking Area include, but are not limited to, campers, motor homes, buses, boats, and industrial or agricultural vehicles. Motorcycles, bicycles and similar modes of transportation may be parked in appropriate areas as may be designated within the Garage.
- (c) Partnership and the City shall not permit any automobile brought onto the Garage by any Partnership Parties or City Parties to be serviced or otherwise repaired while parked in the Garage unless such repair or service is necessary to remove the vehicle from the Garage; for the protection of public health and safety or the environment; or to otherwise comply with applicable laws and regulations.
- (d) Partnership and the Partnership Parties shall have access to the Garage at all times, subject to the City's right to install gates or other security measures. Any such gates or security measures shall not unreasonably interfere with the use of the Garage by Partnership or the Partnership Parties, and Partnership and the Partnership Parties shall be provided with the means of access through any such gates or other security measures. Any such gates or security measures shall not be closed Monday through Friday from 7:00 a.m. to 7:00 p.m. PST each day.
- (e) Partnership will cause there to be adopted and maintained parking enforcement policies applicable to the use of the Residential Parking Area (the "Parking Policies").

4. Maintenance and Repair Obligations

4.1 City's Maintenance and Repair Obligations. During the Term the City shall be responsible for maintenance and repair of the public parking area and shall perform the maintenance responsibilities set forth in Columns I and III of Exhibit C for the Garage 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. The City shall perform the maintenance responsibilities set forth in Column I of Exhibit C at its sole cost and expense. The City shall perform the maintenance responsibilities set forth in Column III of Exhibit C at its cost and expense and Partnership shall pay Partnership's Share of City's Reimbursable Obligations in accordance with Section 4.4. During the Term the City shall promptly repair, replace or restore at its sole cost and expense any and all of the improvements in the Public Parking Area, including the garage structure, that have been disturbed, damaged or destroyed to same condition existing before such disturbance, damage or destruction occurred.

4.2 Partnership's Maintenance and Repair Obligations. During the Term the Partnership shall be responsible for maintenance and repair of the Residential Parking Area in accordance with the maintenance responsibilities set forth in Column II of Exhibit C 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. The Partnership shall perform the maintenance responsibilities set forth in Column II of Exhibit C at its sole cost and expense. During the Term the Partnership shall promptly repair, replace or restore at its sole cost and expense any and all of the improvements in the Residential Parking Area as set forth in Column II of Exhibit C that have been disturbed, damaged or destroyed to same condition existing before such disturbance, damage or destruction occurred..

4.3 Partnership's Step-In Rights. In the event that the City breaches any of the covenants contained in subsection 4.1 and such default affects Partnership and Partnership Parties access and use of the Residential Parking Area, then Partnership, in addition to whatever other remedy it may have under this Agreement or at law or in equity, shall have the right but not the obligation to enter upon the Garage Property and perform or cause to be performed all such acts and work necessary to restore access and use. If default with respect to minor graffiti, reasonably defined debris, waste material, general maintenance, landscaping and building improvements continues for a period of thirty (30) days after written notice to the City from Partnership, then Partnership shall have the right but not the obligation to enter upon the Garage Property and perform all acts and work necessary to protect, maintain, and preserve the garage and landscaped areas on the Garage Property. Partnership shall have the right to invoice City for the costs related to such default in the amount of the expenditures arising from such acts and work for restoration of use and access, protection, maintenance, and preservation by Partnership and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by the City to Partnership within 45 days of work completed. Partnership may bring legal action to collect the sums due as the result of expending monies pursuant to this subsection. The City agrees that if Partnership brings legal action to enforce its rights under this subsection, the City shall pay Partnership all costs incurred by it, including attorneys' fees and court costs, together with interest from the date Partnership provided notice under this subsection, at the rate of seven percent (7%) per annum.

4.4 Payment of Partnership's Share.

- (a) During the Term the Partnership shall pay to the City Partnership's Share of the costs incurred by the City in performing the City's Reimbursable Obligations.
- (b) Partnership's Share shall be paid and adjusted with reference to a fiscal period of twelve (12) calendar months ("Fiscal Period"), which shall be a fiscal year. At the commencement of the Term and on the anniversary of such date during the Term, City shall advise Partnership in writing of its estimate (the "Estimate") of the dollar amount of the Partnership's Share of the costs of City's Reimbursable Obligations to be payable by Partnership during the Fiscal Period. The Partnership's Share will be the same percentage as the percentage of parking spaces dedicated to the Residential Parking Area of the total parking spaces. Such Estimate

shall in every case be a reasonable estimate and, if requested by Partnership, shall be accompanied by reasonable particulars of the manner in which it was calculated. Partnership's Share of the costs of City's Reimbursable Obligations shall be paid in equal monthly installments on the first day of each month during the Term based on the Estimate. Within thirty (30) days after the end of each the Fiscal Period, City shall provide Partnership with a reconciliation (the "Annual Reconciliation") of the actual Partnership's Share of the actual costs incurred by City in performing City's Reimbursable Obligations for such Fiscal Period and a calculation of the amount by which the actual Partnership's Share payable by Partnership exceeds or is less than (as the case may be) the aggregate installments of Partnership's Share paid by Partnership for such Fiscal Period, together with the total amount of City's Reimbursable Obligations for such Fiscal Period. Within thirty (30) days after the submission of Annual Reconciliation either Partnership shall pay to City any amount by which the amount found payable by Partnership with respect to such Fiscal Period exceeds the aggregate of the monthly payments made by Partnership during such Fiscal Period, or City shall pay to Partnership any amount by which the amount found payable as aforesaid is less than the aggregate of such monthly payments.

- (c) If the Partnership disputes the amount set forth in any Annual Reconciliation provided by City, to the Parties will meet and confer to review City's books and records with respect to City's Reimbursable Obligations for such Fiscal Period to be audited. If, as a result of the review, the Partnership becomes entitled to a refund or credit in an amount greater than five percent (5%) of the Partnership's Share of the City's Reimbursable Obligations as stated in the Annual Reconciliation, the reasonable cost of the review shall be borne by City; otherwise the cost of such review shall be paid by Partnership. If Partnership does not request review in accordance with the provisions of this Section within thirty (30) days after receipt of the Annual Reconciliation, the Annual Reconciliation shall be final and binding for all purposes.

4.5 Garage Property Management Agent. At all times during the Term the City shall manage the Garage, including the public parking area and the garage structure, in accordance to Columns I and III of Exhibit C. The Partnership will be responsible for the residential parking area, in accordance to Column II of Exhibit C.

- 5. Taxes, Assessments and Development Impact Fees. At all times during the Term the City 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 Garage Property or Partnership's interest in the Garage Property; provided, however, that the City shall have the right to contest in good faith any such taxes, assessments, or charges. In the event the City exercises its right to contest any tax, assessment, or charge against it, the City, 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.

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

6.1 Default of City. The following event shall constitute a City Event of Default and a basis for Partnership to take action against the City:

- (a) The City breaches any material provision of this Agreement.
- (b) Upon the happening of any of the above-described events, Partnership shall first notify the City in writing of its purported breach or failure, giving the City 60 days from receipt of such notice to cure or, if cure cannot be accomplished within 60 days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said 60 days, or if the breach or failure is of such a nature that it cannot be cured within 60 days, the City fails to commence to cure within such 60 days and thereafter diligently completes such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then Partnership may pursue any and all remedies available at law.

6.2 Default of Partnership. The following event shall constitute a Partnership Event of Default and a basis for the City to take action against Partnership:

- (a) Partnership breaches any material provision of this Agreement.
- (b) Upon the happening of any of the above-described events, the City shall first notify Partnership in writing of its purported breach, failure or act above described, giving Partnership in writing sixty (60) days from receipt of such notice to cure, or, if cure cannot be accomplished within said sixty (60) days, to commence to cure such breach, failure, or act. In the event Partnership fails to cure within said sixty (60) days, or if such breach is of a nature that it cannot be cured within sixty (60) days, Partnership fails to commence to cure within said sixty (60) 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: prosecuting an action for damages (but specifically excluding lost profits, special damages and consequential damages) or specific performance.

6.3 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.

6.4 Waiver of Terms and Conditions. No waiver of any default or breach by Partnership 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 in this Agreement 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 Partnership 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.

7. Hazardous Materials.

7.1 No Hazardous Materials Activities. Each Party hereby represents and warrants to the other that, at all times from and after the Issuance of the Garage Improvements Certificate of Completion until the expiration of the Term, each Party shall not cause or permit its portion of the Garage Property or the Garage Improvements to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

7.2 Hazardous Materials Laws. Each Party hereby represents to the other that, at all times from and after the issuance of the Garage Improvements Certificate of Completion until the expiration of the Term, each Party shall comply and cause the Garage Property and the Garage Improvements to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

7.3 Notices. Each Party hereby represents to the other that, at all times from and after the issuance of the Garage Improvements Certificate of Completion until the expiration of the Term, each Party shall immediately notify the other in writing of: (i) the discovery of any Hazardous Materials on or under the Garage Property; (ii) any knowledge that the Garage Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against Partnership, the Garage Property, or the Garage Improvements by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws, or arising from claims of nuisance, or damage to property or personal injury relating to Hazardous Materials associated with the Garage Property or the Garage Improvements located thereon (collectively "Hazardous Materials Claims"); and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Garage Property, that could cause the Garage 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 Garage Property under any Hazardous Materials Laws. Each Party 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 party ultimately determined to be responsible.

7.4 Remedial Action. Without prior written notice to Partnership, the City shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Garage Property or the Garage Improvements (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

7.5 Indemnification. Each Party agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the other) the other Party, its elected officials, officers and board members, employees, and agents, from all suits, actions, claims, causes of action, administrative proceeding, arbitrations, enforcement actions, costs, demands, judgments and liens to the extent arising out of liability due to arising from (i) any Hazardous Materials that after the issuance of the Garage Improvements Certificate of Completion are (a) released, spilled or treated at the Garage Property, or (b) any breach of the representations and warranties in Sections 6.1 and 6.2, caused by the that Party. 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.

8. General Indemnification.

8.1 Partnership. Partnership agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its elected and appointed officials, employees, and agents, from all suits, actions, claims, causes of action, administrative proceeding, arbitrations, enforcement actions, costs, demands, judgments and liens to the extent arising out of Partnership's performance or non-performance under this Agreement, or to the extent arising out of acts or omissions of any of Partnership's contractors or subcontractors , except to the extent directly caused by the City's or its elected and appointed officials, employees, and agents willful misconduct or gross negligence. Partnership is responsible for any claims arising out of residents' use of the Residential Parking Area to the extent that such claims arise out of Partnership's performance of its maintenance obligations as set forth in Column II in Exhibit C. 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.

8.2 City. The City agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Partnership) Partnership, its officers and board members, employees, and agents, from all suits, actions, claims, causes of action, administrative proceeding, arbitrations, enforcement actions, costs, demands, judgments and liens to the extent arising out of the City's performance or non-performance under this Agreement, or to the extent arising out of acts or omissions of any of the City, its employees, its contractors, and its subcontractors,, except to the extent directly caused by Partnership or its officers and board members, employees, and agents willful misconduct or gross negligence. City is responsible for any claims arising out of any use of the Public Parking Area and any claims arising out of City's performance of its maintenance obligations as set forth in Column I and III of Exhibit C, including, but not limited to residents entering and exiting the residential portion of the Garage. 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.

9. Insurance Requirements.

9.1 Required Coverage.

(a) City. The City shall, at all times during the Term, maintain and keep in force, at its sole cost and expense, the following insurance applicable to the Garage:

- (1) To the extent required by law, Workers' Compensation insurance, including Employer's Liability coverage, with limits not less than required by applicable law.
- (2) Comprehensive or Commercial General Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations, and an umbrella policy with limits not less than Three Million Dollars (\$3,000,000).
- (3) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.
- (4) Property insurance against all risks of loss to the Garage, excluding any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

(b) Partnership. The Partnership shall, at all times during the Term, maintain and keep in force, at its sole cost and expense, the following insurance applicable to the Residential Parking Area:

- (1) To the extent required by law, Workers' Compensation insurance, including Employer's Liability coverage, with limits not less than required by applicable law.
- (2) Comprehensive or Commercial General Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations, and an umbrella policy with limits not less than Three Million Dollars (\$3,000,000).
- (3) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable. For non-owned and hired vehicles, insurance can be provided under Comprehensive or Commercial General Liability insurance.
- (4) Property insurance against all risks of loss to any tenant improvements (defined to be light fixtures, security cameras, signage, access control infrastructure, pedestrian gate to pedestrian bridge, and EV equipment) or betterments, at full replacement cost with no coinsurance penalty provision.

(5) Garagekeeper's Legal Liability Insurance with a limit not less than \$2,000,000 combined single limit per occurrence and \$2,000,000 aggregate.

9.2 General Requirements.

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

(b) Additional Insureds. Comprehensive General Liability and Comprehensive Automobile Liability insurance policies shall be endorsed to name as additional insureds the other Party and its board members, elected and appointed officials, officers, agents, and employees.

(c) Primary Coverage. For any claims covered by City's insurance, the City's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects Partnership, its officers, officials, employees, and agents. Any insurance maintained by Partnership, its officers, officials, employees, or agents shall be excess of the City's insurance and shall not contribute with it. Cancellation. For any claims covered by Partnership's insurance, the Partnership's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by City, its elected and appointed officials, employees, and agents, shall be excess of Partnership's insurance and shall not contribute with it.

(d) Notice of Cancellation. All policies shall be endorsed to provide the Policyholder thirty (30) days' prior written notice of cancellation, reduction in coverage, or intent not to renew, and it shall be the Policyholder's responsibility to notify the other Party of such cancellation, reduction or intent to non-renew, at the address established for notices pursuant to Section 11.

(e) Waiver of Subrogation. Each Party grants to the other Party a waiver of any right to subrogation which any insurer of either Party may acquire against the other Party by virtue of the payment of any loss under such insurance. Each Party agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not a Party has received a waiver of subrogation endorsement from the insurer,

(f) Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the other Party.

(g) Self-Insured Retentions. Self-insured retentions must be declared to and approved by the Parties. At the option of either Party, the other Party must either: 1) Obtain coverage to reduce or eliminate such self-insured retentions as respects the other Party, its officers, officials, employees, and agents; or 2) provide a financial guarantee satisfactory to the other Party guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the other Party.

If to City: City of San Mateo
320 W. 20th Avenue
San Mateo, CA 99403
Attn: City Manager

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.

13. Non-Liability.

13.1 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City or the City shall be personally liable to Partnership, 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 Partnership or successor or on any obligation under the terms of this Agreement.

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

14. 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.

15. Covenants Run with the Land. The covenants and restrictions contained in this Agreement shall run with the land and be binding upon and inure to the benefit of the City and Partnership and their respective successors in title to the Garage Property and the Residential Property or any part thereof, or any interest therein.

16. Modification. This Agreement may not be modified, amended or otherwise changed in any manner, except by a written amendment executed by both the City and Partnership, or their respective successors in interest.

17. Controlling Laws. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

18. No Third Party Beneficiaries. The rights, benefits and obligations conferred hereunder are for the benefit of the parties hereto and not for the benefit of any third party.

19. Mediation. Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within thirty days (30) days of a request, and such mediation shall be limited to one (1) day of mediation. The mediator shall be agreed to by the mediating parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation (other than attorneys' fees of each party) shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties, but not more than sixty (60) days from when such process is commenced, unless the maximum time is extended by mutual written agreement executed by both parties.

20. Litigation. Partnership may at the reasonable request testify at City's request, if litigation is brought against City in connection with this Agreement, to the extent the Partnership is considered a material witness to the action being litigated. Unless the action is brought by Partnership, or is based upon Partnership's wrongdoing, City shall compensate Partnership for preparation for all reasonable attorneys' fees, and for preparation of testimony and travel at Partnership's standard hourly rates at the time of actual testimony.

21. Entire Agreement. Except as otherwise provided in the Ground Lease and Garage Easement Agreement, this Agreement constitutes the entire agreement of the parties with respect to the specific subject matter hereof, and all prior negotiations, agreements and understandings among Partnership and City with respect to the specific subject matter hereof are merged into this Agreement.

22. Counterparts. This Agreement may be executed in counterparts, all of which together constitute one and the same agreement.

IN WITNESS WHEREOF, Partnership and the City have executed this Agreement as of the Effective Date.

PARTNERSHIP:

MP Downtown San Mateo Associates, L.P., a California limited partnership

By: MP Downtown San Mateo, LLC, a California limited liability company, its General Partner

By: Mid-Peninsula Baker Park, Inc., a California nonprofit public benefit corporation, its Manager

By: _____
Jan M. Lindenthal, Assistant Secretary

CITY:

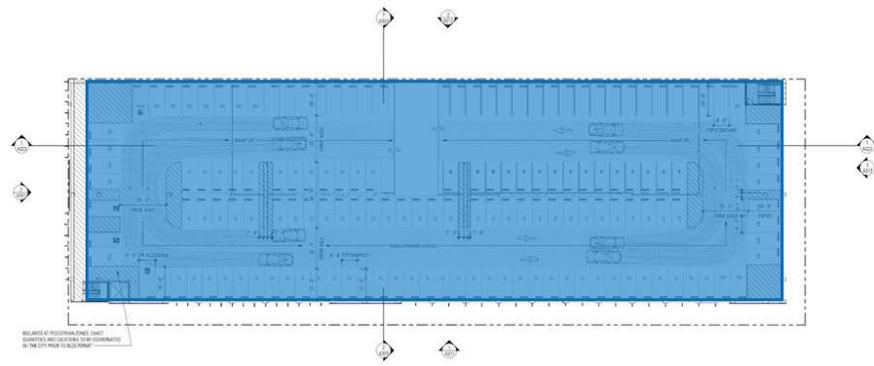
CITY OF SAN MATEO, a California charter city

By: _____
Drew Corbett, City Manager

Approved to as form and legality

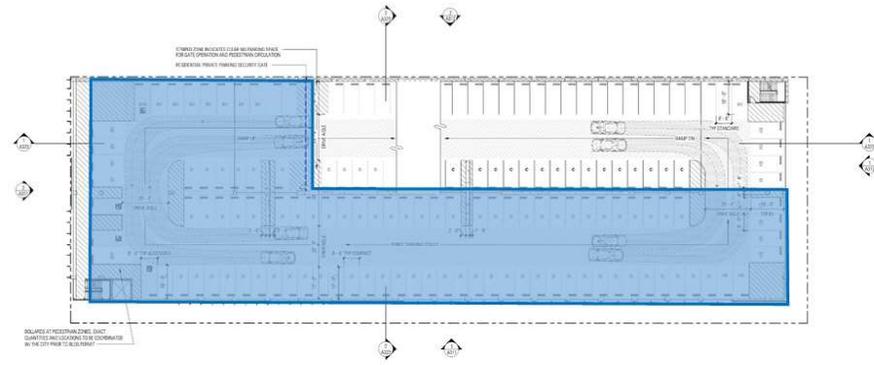
By: _____
Gabrielle Whelan, Assistant City Attorney

Floor 3



Public Parking

Floor 4



Public Parking

EXHIBIT C

Maintenance Responsibilities:

I Exclusively City	II Exclusively Partnership	III City Maintains, Partnership Contributes Partnership's Share
<p>Within public parking area:</p> <ul style="list-style-type: none"> - Light fixtures - Restriping - Cleaning / power-washing floor - Trash - Security cameras (separate system from resident parking area) - Elective wayfinding signage - Elective parking availability signage and occupancy count infrastructure - Elective pay stations - EV equipment - Enforcement of user requirements: parking payment, inoperable vehicles, automobile parking only, no repairs of vehicles within garage, etc. - Towing - Space numbers - Interior painting 	<p>Within resident parking area:</p> <ul style="list-style-type: none"> - Light fixtures - Restriping - Cleaning / power-washing floor - Trash - Security cameras (separate system from public parking area) - Elective property management signage - Access control infrastructure - Access to pedestrian bridge from pedestrian gate at residential parking area - EV equipment - Enforcement of user requirements: parking assignments, inoperable vehicles, automobile parking only, no repairs of vehicles within garage, etc. - Towing - Space numbers - Interior painting 	<p>Superstructure:</p> <ul style="list-style-type: none"> - Elevator, including cleaning and all required testing and monitoring required for recurring certification requirements as mandated by the State of California for conveyance systems - Stairwells, including cleaning - Fire rated exit corridor - Extermination / bird roosting - Resealing floor, including code-required textured flooring - Building exterior, exclusive of public art, decorative façade and pedestrian bridge attachment to superstructure - Code-required signage - Cable rails at ramps - Floor drains - Utilities: Electrical/Water/Sewer - PV Panels - Fire protection systems, including: fire risers, back-flow preventer, sprinkler lines and heads, fire pump (if required), inspection and monitoring for recurring certifications as required

		<ul style="list-style-type: none"> - Window washing (if relevant, i.e. elevator becomes glass enclosed) - Solar carports (if relevant, i.e. required by code) - Landscape, including: irrigation, irrigation controls and Back-flow preventer and all fencing on property - Exterior lighting - Mechanical and electrical systems - Decorative façade (if counted as “public art requirement”) - Permanent stormwater treatment facilities, including storm drains - Fire life safety alarm and elevator call monitoring
Decorative façade (if not counted as “public art requirement”)	Resident parking gate	
Sidewalk	Pedestrian bridge attachment to superstructure	
Fencing at ground floor parking bays		
Exterior signage		