CITY OF DALY CITY

Regular Meeting - CITY COUNCIL

AGENDA

Monday, March 23, 2015 - 7:00 PM
City Hall Council Chambers – 2nd Floor
333 – 90th Street, Daly City, CA 94015

Live Telecast: Comcast Channel 27, Astound 26, AT&T U-Verse 99

Webcast: www.dalycity.org/meetings

DRAFT

For those wishing to address the City Council on any Item on the Agenda or under Public Appearances/Oral Communications, please complete a Speaker Card located at the entrance to the Council Chambers and submit to a Staff Member as early in the meeting as possible.

Persons with disabilities who require auxiliary aids or services in attending or participating in this meeting should call the office of the City Clerk at 991-8078 as soon as possible.

CALL TO ORDER:

PLEDGE TO THE FLAG:

ROLL CALL:

APPROVAL OF AGENDA:

CONSENT AGENDA

All items listed on the Consent Agenda are considered to be routine and may be approved by one roll call vote of the City Council. There shall be no separate discussion of the matters on the Consent Agenda unless requested by a member of the City Council. If discussion is required, that item will be removed from the Consent Agenda and will be considered separately at the end of the Agenda.

Resolutions:

1. Approving Use of State Asset Forfeiture Funds for the Purchase of Promotional Items for Children

AVAILABILITY OF PUBLIC RECORDS:

All public record to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the City Clerk's Office, City Hall located at 333 90th Street, Daly City, CA during normal business hours, at the same time that the public records are distributed or made available to the legislative body.

2. Approving Use of State Asset Forfeiture Fund to Contract with Project Manager for Police/Finance Video Surveillance System

3. Accepting and Appropriating a $10,000 Grant from the Daly City Public Library Associates

4. Authorizing the City Manager to Execute a Facilities Use Agreement with IMG Worldwide, Inc. to Provide Temporary Parking at Westlake Park for the Swinging Skirts LPGA Classic at Lake Merced Golf Club April 20 – 26, 2015

5. Authorizing the City Manager to Execute a Facilities Use Agreement with IMG Worldwide, Inc. for Use of the Training Room at City Hall from April 20 – 26, 2015

6. Authorizing the City Manager to Execute an Agreement with IMG Worldwide, Inc. to Provide Traffic and Safety Services for the Inaugural Swinging Skirts LPGA Classic

7. Home Funds for 6800 Mission Street Affordable Housing Development

END OF CONSENT AGENDA

COMMUNICATIONS:

8. Preliminary Plan for Planned Development PD 10-13-7945 (PD-69),
Design Review DR-10-13-7946, and Environmental Review CEQA-10-13-8022 – Serramonte Shopping Center Expansion

Staff:
VanLonkhuysen
Recommended Action:
Information Only

ORDINANCES:

9. Second Reading, Ordinance No.1387, Amending Chapters 12.16, 12.28, 12.40, and 13.04 of the Daly City Municipal Code

Staff:
Schott
Recommended Action:
Adopt Ordinance
Roll Call

10. Second Reading, Ordinance No. 1388, Amending the Daly City Zoning Map, Re Planned Development Standards for PD-65

Staff:

Schott
Recommended Action:
Adopt Ordinance
Roll Call

PUBLIC APPEARANCES/ORAL COMMUNICATIONS:

NOTE: Speakers are limited to two minutes, unless modified by the Mayor. The Council cannot take action on any matter raised under this item

APPOINTMENTS: Board/Commission Membership Committee Appointments

REPORTS:

11. Council Committee

12. City Council

13. Staff

ADJOURNMENT:

City Council Meeting Agenda Report

Item # _____

Meeting Date: March 23, 2015

<u>Subject:</u> **Requesting Use of State Asset Forfeiture Funds for the Purchase of Promotional Items for Children**

Recommended Action

Staff recommends that Council authorize the Police Department to use State Asset Forfeiture Funds to purchase promotional items for our community youth.

Background

The Daly City Police Department has State Asset Forfeiture funds available for the purchase of promotional items that will assist us in our mission of keeping our youth away from gangs and drugs.

Discussion

State Asset Forfeiture laws stipulate that a portion of the seized funds be spent on funding programs designed to combat drug abuse and divert gang activity, and shall whenever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers. As such, the Daly City Police Department currently provides promotional items to children at our schools and various community events.

Fiscal Impact

The total cost of the promotional items is $3117.40. All monies will be taken from State Asset Forfeiture Funds.

Summary/Conclusions

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,

Patrick Hensley
Captain

Manuel Martinez Jr.
Chief of Police

City Council Meeting Agenda Report

Item # _____

Meeting Date: March 23, 2015

Subject: Use of State Asset Forfeiture Funds to Contract with Project Manager for Police/Finance Video Surveillance System

Recommended Action

Staff recommends Council approve the use of State Asset Forfeiture Funds to contract with Telecommunications Engineering Associates (TEA) for a needs assessment, procurement, and project management of a Police/Finance video surveillance system.

Background

The Police Department does not have a working video surveillance system. The Department did an analysis and determined there was a need for a comprehensive video surveillance system for station security and liability reduction. Several locations were identified within the Department as well as City Hall as high value locations. This was based on previous incidents of vandalism in our police lots, law suits surrounding prisoner movement and detention, and unsubstantiated personnel complaints. Staff visited the South San Francisco Police Department and inspected a recently completed surveillance system. Staff also reviewed project documents including specifications, request for proposal (RFP) and scope of work. Staff met with Daryl Jones, owner of Telecommunications Engineering Associates who managed South San Francisco's project to discuss our goals and objectives for this project.

Discussion

TEA is a long term contractor with the Daly City Police Department. TEA oversees maintenance of and repair of our communications systems as well as several other agencies in San Mateo County. Daryl Jones is recognized as an expert in areas surrounding police technology including networks, radio systems, records management, and video surveillance. Staff believes using TEA will streamline the assessment, procurement, and management phases of this large scale project. The Police Department sees this initial project as the first phase of a larger project which would include an interconnected Citywide system including City Hall and other City facilities. The system would also be able to connect into portable camera systems and even private systems with the consent of the owner. TEA's expertise will help us develop a scalable system and ensure the project will be done in a using the latest technology, minimization of change orders and meeting our current and future needs.

Fiscal Impact

Funding is available through the use of State Asset Forfeiture Funds. The one time contract cost would be $8370.00.

Summary/Conclusion

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,

John Gamez
Captain

Manuel Martinez Jr.
Chief of Police

City Council Meeting Agenda Report

Item # ____

Meeting Date: March 23, 2015

Subject: Accepting and Appropriating a $10,000 Grant from the Daly City Public Library Associates

Recommended Action

It is recommended the City Council accept an unrestricted $10,000.00 grant from the Daly City Public Library Associates and appropriate this amount for the purchase of software and equipment for public programs.

Background/Discussion

The Daly City Public Library Associates are providing a grant to the Library to supplement funds available for the Library's new maker labs. The Library will be purchasing tablets for an assortment of programs such as the upcoming five-session Code Hour series for kids and teens. Eminently portable, this tablet collection will be used in programming at all four library locations.

The funds will also be used to purchase basic equipment and software for a sound lab where, starting this summer, residents of all ages will be able to attend instructional sessions and then book open lab time to create and record spoken word and musical content.

Finally, the grant will fund the purchase of a single license for JAWS. JAWS is the most popular screen reader software that provides speech output for the visually-impaired to assist in accessing the internet and using productivity software. Staff installed JAWS on a dedicated public workstation at the Serramonte Main Library where it is used weekly.

Fiscal Impact

These grant funds were received and will be expended in Fiscal Year 2014/15.

Summary/Conclusion

Staff is available to provide any additional information desired by the Mayor or City Council.

Respectfully submitted,

Chela Anderson
Library Services Manager

Joseph Curran
Director
Department of Library and Recreation Services

City Council Meeting Agenda Report

Item # _____

Meeting Date: March 23, 2015

Subject: Authorizing the City Manager to Execute a Facilities Use Agreement with IMG Worldwide, Inc. to Provide Temporary Parking at Westlake Park for the Swinging Skirts LPGA Classic at Lake Merced Golf Club April 20 – 26, 2015

Recommended Action

It is recommended that the Council authorize the City Manager to execute the attached Facilities Use Agreement, between the City of Daly City and IMG Worldwide, Inc. ("IMG") for the temporary use of Westlake Park to provide parking during the Swinging Skirts LPGA Classic at Lake Merced Golf Club from April 20 -26, 2015.

Background/Discussion

The Swinging Skirts LPGA Classic Golf Tournament will be held on April 20-26, 2015 at Lake Merced Golf Club. The tournament is expected to draw spectators from throughout the Bay Area. IMG, the tournament manager, is requesting the use of City facilities on behalf of the LPGA to provide ample parking spaces for spectators. Specifically, IMG is requesting the exclusive use of portions of the Westlake Park Facility for this purpose.

Westlake Park will be used only during the public events of the Swinging Skirts LPGA Classic, April 22-26, 2015, to accommodate spectators. A shuttle service will be used to transport spectators from Westlake Park to Lake Merced Golf Club between the hours of 7:00 a.m. and 7:00 p.m. Participants of City sponsored activities will be minimally affected by IMG's use of Westlake Park, as this temporary use is non-exclusive. Public parking adjacent to the Doelger Senior Center, Larcombe Clubhouse, and Pacelli Event Center will remain available to visitors.

Fiscal Impact

The attached IMG Use Agreement requires IMG Worldwide, Inc. to provide payment to the City for the exclusive use of 162 asphalt parking spaces and 325 grass parking spots, as designated, at a cost of $4.25 per space, for the period April 22-26, 2015, totaling $2,069.75 per day.

Summary/Conclusion

Staff is available to provide any additional information desired by the Mayor or City Council.

Respectfully submitted,

Patricia E. Martel
City Manager

Joseph Curran
Director, Dept. of Library and Recreation Services

IMG USE AGREEMENT

THIS USE AGREEMENT ("Agreement") is made and entered into as of the _____day of _______________, 2015 by and between IMG Worldwide, Inc. ("IMG") and the City of Daly City ("Daly City").

BACKGROUND

A. Daly City presently controls the parking lot located at Westlake Park in Daly City, California (the "Lot").

B. IMG desires to utilize the Lot for parking and shuttle services for The Swinging Skirts LPGA Classic to be held April 20-26, 2015 ("Event") at the Lake Merced Golf Club in Daly City, California.

C. Daly City has the authority to contract for IMG's use of the Lot.

D. Daly City and IMG desire to enter into this Agreement to set forth the agreement between the parties in connection with IMG's use of the Lot for the Event.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IMG and Daly City agree as follows:

1. **TERM**. The term of this Agreement shall be for the period commencing upon execution of this Agreement and continuing until April 26, 2015; provided, however, that each party shall be obligated to fulfill its obligation which are accrued but unpaid or not performed as of the date of termination.

2. **DALY CITY OBLIGATIONS**. Daly City hereby covenants and agrees with IMG that:

(a) ***Exclusive Use***. Daly City shall make one hundred sixty-two (162) asphalt parking spots and three hundred twenty-five (325) grass parking spots in the designated areas available to IMG for parking Event spectator vehicles each day during the Event, regardless of whether such spots are actually used by IMG on each such day. IMG acknowledges that the Lot may also be used for parking up to one hundred twenty-nine (129) Daly City employee vehicles, as well as providing spaces for the public as needed, during such time. Daly City shall ensure that no other parties interfere with IMG's exclusive use thereof during the Event.

(b) ***Prior & Subsequent Use***. Daly City shall also provide IMG access to the Lot on mutually agreed dates preceding and following the Event so that IMG may prepare the Lot for the Event and clean-up following the Event. IMG will coordinate with Daly City regarding such prior and subsequent use. Specifically, IMG shall have non-exclusive use from April 18, 2015 for the purposes of preparing the Lot for the Event.

(c) ***Modification***. Daly City shall permit IMG to rope and/or fence (chain or barricade) the Lot and to direct the parking of cars on the Lot as more fully set forth in Section 3. Daly City shall also permit IMG to erect shade canopies (either 10'x10' or 20'x20'), and/or place signage (including flagpoles, banners, directional signs and traffic cones) on the Lot as IMG deems appropriate. IMG shall be solely responsible for configuring the Lot for use during the Event.

(d) ***Event Access***. Daly City shall permit IMG to retain the services of a car parking service to park vehicles during the Event, as IMG deems appropriate. Daly City shall also permit IMG to retain the services of a transportation management company to provide shuttle services to and from the Lot to the Event. Any such service shall be at IMG's sole expense. IMG shall be solely responsible for determining and granting access to the Lot during the Event.

(e) ***Maintenance***. Other than as specifically set forth above, IMG accepts the Lot in its present condition, and Daly City agrees to maintain the Lot in its present condition and in good repair, normal wear and tear excepted, during the Term of this Agreement.

3. IMG OBLIGATIONS.

(a) ***Expenses***. Except as otherwise specifically set forth herein, IMG shall be responsible for all expenses associated with IMG's use and operation of the Lot pursuant to Section 2 above (e.g., installation and removal of any and all ropes, barricades, signage, etc.). Any material modification of the Lot in preparation for the Event shall be subject to the prior reasonable approval of Daly City.

(b) ***Insurance***. IMG shall properly insure the Lot as part of IMG's commercial general liability insurance with limits of One Million Dollars ($1,000,000.00) per occurrence and a general aggregate of Two Million Dollars ($2,000,000.00) covering claims for injuries to people or damage to property. Upon request and approval by Daly City, IMG shall provide Daly City a certificate of insurance evidencing such coverage and an endorsement naming the City as an additional insured.

(c) ***Permits/Licenses***. IMG shall be responsible for obtaining all government assistance and approvals necessary to use the Lot as contemplated herein and such use will be in accordance with all applicable laws and regulations. Daly City agrees to assist IMG in such matters upon reasonable request of IMG.

(d) ***Staffing/Use***.

(i) *Security/Collection of Fees.* At its sole expense, IMG shall provide all security and parking management staff for the Lot during the Event. IMG shall be solely responsible for collecting a fee, if any, as IMG deems appropriate from each vehicle parked in the Lot during the Event and shall retain any and all proceeds from such fees.

(ii) *Trash*. At its sole expense, IMG shall ensure the Lot has adequate trash receptacles and that such receptacles are emptied on a daily basis during the Event.

(e) ***Access***. IMG shall be solely responsible for determining and granting access to the Lot during the Event, including authorized Event personnel, emergency services personnel (e.g., police, fire and medical), and persons holding valid admission badges, tickets or passes issued by IMG.

(f) ***Restoration***. IMG agrees that all temporary signage, barricades, etc. used for the Event will be erected in a manner that will not permanently damage the Lot. IMG shall be responsible for ensuring that the Lot remains in good repair during the Term of this Agreement and will return the Lot no later than April 27, 2015 to its condition prior to the Event, with normal wear and tear associated with such activity expected. Daly City acknowledges and agrees that IMG may obtain a video tape of the Lot preceding the Event and following the Event to be used in the determination of the scope of damage, if any, to the Lot caused by the Event.

(g) ***Parking and Transportation Vendor.*** IMG will be retaining the services of Executive Events Services (EES) for all parking and transportation during the Event. IMG will ensure that EES shall be responsible for all traffic management during the Event, including but not limited to, providing adequate egress/ingress, circulation control, as well as cooperating with the Daly City Police Department on any and all traffic related issues during the Event.

4. CONSIDERATION. In consideration of the rights and benefits to IMG hereunder, IMG shall provide Daly City:

Four and 25/100 Dollars ($4.25) per spot per day for the four hundred eighty-seven parking spots, totaling Two Thousand Sixty Nine Hundred and 75/100 ($2,069.75) per day total.

The above amounts include all applicable taxes, and IMG shall remit payment to Daly City as follows: fifty percent (50%) upon signature of this Agreement by the parties and fifty percent (50%) on or before April 21, 2014.

5. INDEMNIFICATION. Daly City shall indemnify and hold IMG harmless from any and all loss and liability on account of any damages or injury and from all liens, claims and demands caused by any willful acts or omissions or the negligence of Daly City in connection with the operation and use of the Lot by IMG, the performance by Daly City of its obligations hereunder or from the breach by Daly City of any obligation hereunder, but Daly City shall not be liable for damage or injury occasioned by failure of IMG to comply with obligations hereunder or by reason of negligence of IMG, its agents or employees. IMG shall indemnify and hold Daly City harmless from all loss or liability whatsoever, on account of any damages or injury, claims and demands arising out of negligent acts or omissions of IMG hereunder, its agents or employees.

6. INSURANCE. IMG shall obtain and secure throughout the Term commercial general liability insurance, auto insurance and applicable workers' compensation and employer's liability insurance. The commercial general liability and auto insurance shall have limits of at least One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) in the aggregate. Employer's liability and workers' compensation shall have minimum statutory limits. IMG shall add Daly City as an additional insured to the commercial general liability policy and shall present a certificate of insurance evidencing such coverage to Daly City as set forth in Section 3(b), as well an additional insured endorsement.

7. MISCELLANOUS.

(a) ***Governing Law***. This Agreement is to be governed by and interpreted in accordance with the laws of the State of California, United States of America.

(b) ***Entire Agreement***. This Agreement constitutes the entire agreement between the parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings or agreements, oral or written, among the parties hereto relating to the subject matter of this Agreement except those fully expressed herein and each party agrees that it has not relied on and is not entitled to rely on any statements, promises or representations other than those set forth herein in entering into this Agreement. This Agreement may not be modified or amended except by the mutual written agreement of the parties.

(c) ***Assignment***. The provisions hereof shall inure to the benefit, and be binding upon the successors, legal representatives and assigns, of the parties hereto; provided, however, that neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld; provided further, however, that, notwithstanding the foregoing, IMG may assign this Agreement to an affiliated entity or subsidiary for tax planning purposes without prior notice or approval of Daly City.

(d) ***Confidentiality***. Each party acknowledges that it may have access to certain trade secrets and other non-public confidential information of the other during and in connection with its performance of services and/or obligations hereunder **("Confidential Information")**, and hereby agrees not to disclose any Confidential Information to any third party and not to use any such Confidential Information for any purpose other than performance pursuant to this Agreement. All such Confidential Information and trade secrets are and shall remain the exclusive property of the disclosing party and no license shall be granted or implied with respect to such Confidential Information or trade secrets by reason of the other party's access to the same in connection with its performance of services or obligations hereunder. The parties' foregoing agreement of non-use and nondisclosure shall survive any termination or expiration of this Agreement and shall continue in full force and effect for a period of three (3) years from the date of expiration or termination hereof unless the Confidential Information constitutes a "trade secret" under applicable law, in which case the obligations shall survive for as long as provided for under applicable law. Confidential Information shall not include information in the public domain or information which a party acquires from a third party who provides the same without violating any obligation of confidentiality or nondisclosure. Furthermore, it shall not be deemed to be a violation of this provision for a party to disclose any Confidential Information to a judicial or governmental authority compelling such disclosure by appropriate order provided that the party receiving any such order shall provide the other party with notice at the earliest practicable moment to permit the other party to seek appropriate protective orders.

(e) ***Limitation of Liability***. In no event shall either party be liable for special, incidental, punitive or consequential damages arising out of this Agreement.

(f) ***Waiver***. Any waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision of this Agreement. Any waiver must be in writing and signed by the party against whom the waiver is sought.

(g) ***Invalidity***. The determination that any provision of this Agreement is invalid or unenforceable shall not invalidate this Agreement, and this Agreement shall be construed and performed in all respects as if such invalid or unenforceable provisions were omitted insofar as the primary purpose of this Agreement is not frustrated.

(h) ***Notices***. All notices, demands, requests or other communications relating to this Agreement shall be in writing and shall be mailed, first class, or transmitted by hand delivery, overnight' delivery service, or telecopy (with acknowledgment of receipt), addressed as set forth below. Notice will be deemed effective as of the date of receipt, if sent by hand delivery, overnight delivery or facsimile, and five (5) calendar days following posting if sent by mail.

If to Daly City: City of Daly City
333 90th Street

Daly City, California 94015, USA
Attn: Patricia Martel, City Manager

If to IMG: IMG Worldwide, Inc.
304 Park Ave., South, 5th Floor
New York, NY 10010
Attn: Jon-Paul Genet, Tournament Director

(i) ***Relationship of the Parties***. The parties agree that this Agreement does not and shall not be construed as or constitute an agency, partnership or joint venture, or other fiduciary or confidential relationship between IMG and Daly City.

(j) ***Inurement***. This Agreement shall be binding upon and shall inure to the benefits of the parties hereto and their respective heirs, executors, administrators, personal representatives and/or successors.

(k) ***Counterparts***. This Agreement may be executed in any number of counterparts, including facsimile, and each counterpart shall be deemed an original.

(l) ***Sophistication of the Parties***. Each party to this Agreement represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the Agreement. This Agreement shall be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either party. No ambiguity or omission shall be construed or resolved against either party on grounds that this Agreement or any provision thereof was drafted or proposed by such party.

(m)***Attorneys' Fees***. In any action related to this Agreement, the prevailing party may be entitled to recover from the other the prevailing party's costs, including reasonable attorneys' fees, whether such fees and costs be incurred at trial, on appeal or otherwise.

(n) ***Exhibits***. The parties agree that all Exhibits to the Agreement are hereby incorporated into and shall form an integral part of this Agreement.

(o) ***Force Majeure/Cancellation***. The term "Force Majeure" shall mean acts of God, earthquakes, blizzards, tornadoes, hurricanes, fire, flood, malicious mischief, insurrection, riots, labor disturbances, public enemy, war, landslides, explosions, epidemics, compliance with any order, ruling, injunction or decree by any court, tribunal or judicial authority of competent jurisdiction and any other similar circumstances beyond the reasonable control of a party. Each party acknowledges and agrees that IMG shall have the right to cancel or reschedule the Event as a result of a Force Majeure event. In such event, (i) IMG shall not be responsible to reimburse any expenses of Daly City in connection with such cancellation or rescheduling and (ii) if the Event is rescheduled, Daly City shall cooperate with IMG in use of the Lot during the rescheduled dates at IMG's sole expense.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date and year first above written.

CITY OF DALY CITY

By: ______________________________________

Name: ____________________________________

Title: _____________________________________

IMG WORLDWIDE, INC.

By: _______________________________________

Name: _____________________________________

Title:______________________________________

City Council Meeting Agenda Report Item # _____

Meeting Date: March 23, 2015

Subject: Authorizing the City Manager to Execute a Facilities Use Agreement with IMG Worldwide, Inc. for Use of the Training Room at City Hall from April 20 – 26, 2015

Recommended Action

It is recommended that the Council authorize the City Manager to execute the attached Facilities Use Agreement, between the City of Daly City and IMG Worldwide, Inc. ("IMG") for the temporary use of the Training Room on the First Floor of City Hall, 333 90th Street, during the Swinging Skirts LPGA Classic at Lake Merced Golf Club from April 20 -26, 2015.

Background/Discussion

The Swinging Skirts LPGA Classic Golf Tournament will be held on April 20-26, 2015 at Lake Merced Golf Club. Participants in the tournament are afforded off-site childcare services for the duration of the event. A License Agreement for the use of the City Hall Training Room on the will allow the LPGA to provide childcare services as needed for players at a safe, secure nearby location. The Training Room will be made available for childcare services that will be directly provided by the LPGA's vendor.

Fiscal Impact

The attached License Agreement for the use of property at 333 – 90th Street, Daly City (First Floor Training Room) will authorize the LPGA to provide childcare services for the period April 21-27, 2014. The fee for the license is $500.

Summary/Conclusion

Staff is available to provide any additional information desired by the Mayor or City Council.

Respectfully submitted,

Patricia E. Martel	Joseph Curran
City Manager	Director, Dept. of Library and Recreation Services

LICENSE FOR THE
USE OF PROPERTY

This license is entered into by and between the CITY OF DALY CITY ("City") and IMG Worldwide, Inc. ("Licensee").

This license is made and executed on ______ day of ____________, 2015, in Daly City, California.

WHEREAS, the City is the owner of certain real property commonly known as the Training Room, located at City Hall, 333 90th Street (hereinafter described as "Premises") in the City of Daly City; and

WHEREAS, the Licensee will be hosting The Swinging Skirts LPGA Classic Golf Tournament ("Special Event") at the Lake Merced Golf Club, located in the City of Daly City, California, from April 20 -26, 2015; and

WHEREAS, the Licensee desires to use the Premises for the operation of a temporary childcare facility during the Special Event for the purposes of providing childcare for the players participating in the Special Event.

NOW, THEREFORE, the parties agree as follows:

1. The City grants to Licensee a revocable license to use the Premises for the limited purpose of operating a temporary childcare facility, in conformance with the LPGA Childcare Handbook. No other dissimilar use is allowed without prior written consent from the City.

2. <u>License Fee.</u> Licensee shall pay the City a fee of $500.00. Payment shall be due upon issuance of the License.

3. <u>Term.</u> This license term shall be limited from April 20 -26, 2015, 7:30 a.m.-5:30 p.m.

4. Licensee shall provide adequate supervisory personnel so that someone may be identified and contacted regarding management of the service at all times when the food service is open for business.

5. Licensee shall be responsible for maintaining the Premises in a clean and orderly manner, and for removing debris or rubbish after each day's service. If Licensee fails after notice from the City to maintain and keep the Premises clean and orderly, the City may at the expense of the Licensee cure the deficiency at any time. If such problem occurs the second time, the City reserves the right to revoke Licensee's license.

6. Indemnification. Licensee agrees to indemnify, defend and hold harmless the City from and against any and all claims, losses, damages, expenses, judgments and costs, including attorney's fees and court costs, resulting from Licensee's use of the Premises under this license.

7. Insurance. Licensee shall, at its own expense, maintain in force during the term of this License a policy of commercial liability insurance with limits of One Million Dollars ($1,000,000.00) per occurrence and a general aggregate of Two Million Dollars ($2,000,000.00) insuring and endorsing the City as additional insured against liability resulting from Licensee's use of the Premises under this License. Licensee shall furnish a certificate of insurance and endorsement to the City Attorney's Office for approval upon use of the property.

8. Assignability. Licensee shall not assign, sublicense or otherwise transfer its rights under this License to any other party.

9. Notices. All notices to the City shall be sent to Patricia E. Martel, City Manager, City of Daly City, 333 90th Street, Daly City, CA 94015. All notices to the Licensee shall be sent to Jon-Paul Genet, Tournament Director, International Management Group Worldwide, 304 Park Ave., South, 5th Floor, New York, NY 10010.

10. This License contains the entire understanding between the parties relating to the rights and obligations assumed under it. Any amendments or modifications to this license will not be effective unless contained in a writing issued by the City.

11. This license shall be interpreted and construed under the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this License as of the date and first above written.

CITY

____

Patricia E. Martel
City Manager

LICENSEE, hereby accepts the above conditions:

____

Jon-Paul Genet
Tournament Director, IMG Worldwide, Inc.

City Council Meeting Agenda Report

Item # _____

Meeting Date: March 23, 2015

Subjects: Authorize Agreement with IMG Worldwide, Inc. to Provide Traffic and Safety Services for the Inaugural Swinging Skirts LPGA Classic

Recommended Action

Staff recommends the City of Daly City enter into a contract with IMG (International Management Group) Worldwide, Inc. to provide traffic and security services for the Swinging Skirts Classic to be held at Lake Merced Golf and Country Club from April 20-26, 2015. The total non-taxpayer funded cost of police services for the event is $26,733.34.

Background

From April 20-26, 2015 the Ladies Professional Golf Association is hosting the Swinging Skirts Classic Golf Tournament at the Lake Merced Golf and Country Club. It is estimated that the tournament could bring as many as 10,000 spectators per day to the Lake Merced Golf and Country Club and surrounding areas. This increase in vehicle and pedestrian traffic, as well as the need to provide a secure environment for patrons and residents caused the City and Police Department to enter into discussions with IMG Worldwide on how to address these issues. After extensive planning, IMG, the Police Department and the City Manager have come to an agreement on the level of service to be provided and the costs associated with that service.

Discussion

IMG and their subcontractors will be operating both on and off-site during the event. The Daly City Police Department has been designated to staff up to 5 traffic and security posts up to 12 hours each day of the tournament. The Police Department has put together a staffing plan involving on-duty personnel and off-duty personnel assigned on an overtime basis. The staffing for the event will not diminish our ability to provide high quality police services to our residents during the golf tournament. The employee classifications operating at the event are Police Assistants, Police Officers and a Police Lieutenant.

The Police Department has worked closely with the Finance Department to determine the entire cost of providing these services to IMG without the use of taxpayer money. The attached costing sheet is based on the top salary of each classification with associated benefits (see attached worksheet).

City Council Meeting Agenda Report **Item # _____**

Fiscal Impact

The traffic and security staffing for the Swinging Skirts Classic will not be funded by taxpayer money. The estimated $26,733.34 cost will be fully reimbursed by IMG Worldwide, Inc.

Summary/Conclusions

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,

Patrick Hensley
Captain

Manuel Martinez
Chief of Police

Attachments

Attachment 1-Swinging Skirts Classic Costing Sheet for security and traffic services for April 20-26, 2015.

Attachment 2- Traffic and Security Services Agreement for April 20-26, 2015

Location	Position	Name	Date	Reg. Hours	O/T Hours	Total Hours	Pay Rate	O/T Rate
City Hall / Child Care	Police Officer	TBD	Monday, 04/20/15	0	11.5	11.5		
Officer Total Hours				***0***	***11.5***	***11.5***	$77.54	$73.05
Officer Cost				***$0.00***	***$840.08***	***$840.08***		
Entrance to Lake Merced CC	Police Assistant	TBD	Monday, 04/20/15	0	11.5	11.5		
Police Assistant Total Hours				***0***	***11.5***	***11.5***	$46.11	$43.46
Police Assistant Cost				***$0.00***	***$499.79***	***$499.79***		
Supervisor	Lieutenant	Mussman	Monday, 04/20/15	10	1.5	11.5		
Lieutenant Total Hours				***10***	***1.5***	***11.5***	$99.59	$97.10
Lieutenant Cost				***$995.90***	***$145.65***	***$1,141.55***		
Total hours				**10**	**24.5**	**34.5**		
Total Cost				**$995.90**	**$1,485.52**	**$2,481.42**		

Location	Position	Name	Date	Reg. Hours	O/T Hours	Total Hours	Pay Rate	O/T Rate
City Hall / Child Care	Police Officer	TBD	Tuesday, 04/21/15	0	11.5	11.5		
Officer Total Hours				***0***	***11.5***	***11.5***	$71.01	$73.05
Officer Cost				***$0.00***	***$840.08***	***$840.08***		
Entrance to Lake Merced CC	Police Assistant	TBD	Tuesday, 04/21/15	0	11.5	11.5		
Police Assistant Total Hours				***0***	***11.5***	***11.5***	$44.00	$45.63
Police Assistant Cost				***$0.00***	***$499.79***	***$499.79***		
Supervisor	Lieutenant	Mussman	Tuesday, 04/21/15	10	1.5	11.5		
Lieutenant Total Hours				***10***	***1.5***	***11.5***	$99.59	$97.10
Lieutenant Cost				***$995.90***	***$145.65***	***$1,141.55***		
Total hours				**10**	**24.5**	**34.5**		
Total Cost				**$995.90**	**$1,485.52**	**$2,481.42**		

Location	Position	Name	Date	Reg. Hours	O/T Hours	Total Hours	Pay Rate	O/T Rate
Lake Merced Country Club	Police Officer	TBD	Wednesday, 04/22/15	0	11.5	11.5		
Lake Merced Country Club	Police Officer	TBD	Wednesday, 04/22/15	0	11.5	11.5		
City Hall / Child Care	Police Officer	TBD	Wednesday, 04/22/15	0	11.5	11.5		
Officer Total Hours				***0***	***34.5***	***34.5***	$71.01	$73.05
Officer Total Cost				***$0.00***	***$2,520.23***	***$2,520.23***		
Westlake Park	Police Assistant	TBD	Wednesday, 04/22/15	0	4	4		
Lake Merced Country Club	Police Assistant	TBD	Wednesday, 04/22/15	0	11.5	11.5		
Police Assistant Total Hours				***0***	***15.5***	***15.5***	$44.00	$45.63
Police Assistant Total Cost				***$0.00***	***$707.26***	***$707.26***		
Supervisor	Lieutenant	Mussman	Wednesday, 04/22/15	10	1.5	11.5		
Lieutenant Total Hours				***10***	***1.5***	***11.5***		
Lieutenant Total Cost				***$995.90***	***$145.65***	***$1,141.55***	$99.59	$97.10
Total Hours				**10**	**24.5**	**34.5**		
Total Cost				**$995.90**	**$3,373.14**	**$4,369.04**		

Location	Position	Name	Date	Reg. Hours	O/T Hours	Total Hours	Pay Rate	O/T Rate
Lake Merced Country Club	Police Officer	TBD	Thursday, 04/23/15	0	11.5	11.5		
Lake Merced Country Club	Police Officer	TBD	Thursday, 04/23/15	0	11.5	11.5		
City Hall / Child Care	Police Officer	TBD	Thursday, 04/23/15	0	11.5	11.5		
Officer Total Hours				***0***	***34.5***	***34.5***	$71.01	$73.05
Officer Total Cost				***$0.00***	***$2,520.23***	***$2,520.23***		
Westlake Park	Police Assistant	TBD	Thursday, 04/23/15	0	4	4		
Lake Merced Country Club	Police Assistant	TBD	Thursday, 04/23/15	0	11.5	11.5		
Police Assistant Total Hours				***0***	***15.5***	***15.5***	$44.00	$45.63
Police Assistant Total Cost				***$0.00***	***$707.26***	***$707.26***		
Supervisor	Lieutenant	Mussman	Thursday, 04/23/15	10	1.5	11.5		
Lieutenant Total Hours				***10***	***1.5***	***11.5***		
Lieutenant Total Cost				***$995.90***	***$145.65***	***$1,141.55***	$99.59	$97.10
Total Hours				**10**	**24.5**	**34.5**		
Total Cost				**$995.90**	**$3,373.14**	**$4,369.04**		

Location	Position	Name	Date	Reg. Hours	O/T Hours	Total Hours	Pay Rate	O/T Rate
Lake Merced Country Club	Police Officer	TBD	Friday, 04/24/15	0	11.5	11.5		
Lake Merced Country Club	Police Officer	TBD	Friday, 04/24/15	0	11.5	11.5		
City Hall / Child Care	Police Officer	TBD	Friday, 04/24/15	0	11.5	11.5		
Officer Total Hours				***0***	***34.5***	***34.5***	$71.01	$73.05
Officer Total Cost				***$0.00***	***$2,520.23***	***$2,520.23***		
Westlake Park	Police Assistant	TBD	Friday, 04/24/15	0	4	4		
Lake Merced Country Club	Police Assistant	TBD	Friday, 04/24/15	0	11.5	11.5		
Police Assistant Total Hours				***0***	***15.5***	***15.5***	$44.00	$45.63
Police Assistant Total Cost				***$0.00***	***$707.26***	***$707.26***		
Supervisor	Lieutenant	Mussman	Friday, 04/24/15	0	11.5	11.5		
Lieutenant Total Hours				***0***	***11.5***	***11.5***	$99.59	$97.10
Lieutenant Total Cost				***$0.00***	***$1,116.65***	***$1,116.65***		
Total Hours				**0**	**61.5**	**61.5**		
Total Cost				**$0.00**	**$4,344.14**	**$4,344.14**		

Location	Position	Name	Date	Reg. Hours	O/T Hours	Total Hours	Pay Rate	O/T Rate
Lake Merced Country Club	Police Officer	TBD	Saturday, 04/25/15	0	11.5	11.5		
Lake Merced Country Club	Police Officer	TBD	Saturday, 04/25/15	0	11.5	11.5		
City Hall / Child Care	Police Officer	TBD	Saturday, 04/25/15	0	11.5	11.5		
Officer Total Hours				***0***	***34.5***	***34.5***	$71.01	$73.05
Officer Total Cost				***$0.00***	***$2,520.23***	***$2,520.23***		
Westlake Park	Police Assistant	TBD	Saturday, 04/25/15	0	4	4		
Lake Merced Country Club	Police Assistant	TBD	Saturday, 04/25/15	0	11.5	11.5		
Police Assistant Total Hours				***0***	***15.5***	***15.5***	$44.00	$45.63
Police Assistant Total Cost				***$0.00***	***$707.26***	***$707.26***		
Supervisor	Lieutenant	Mussman	Saturday, 04/25/15	0	11.5	11.5		
Lieutenant Total Hours				***0***	***11.5***	***11.5***	$99.59	$97.10
Lieutenant Total Cost				***$0.00***	***$1,116.65***	***$1,116.65***		
Total Hours				**0**	**61.5**	**61.5**		
Total Cost				**$0.00**	**$4,344.14**	**$4,344.14**		

Location	Position	Name	Date	Reg. Hours	O/T Hours	Total Hours	Pay Rate	O/T Rate
Lake Merced Country Club	Police Officer	TBD	Sunday, 04/26/15	0	11.5	11.5		
Lake Merced Country Club	Police Officer	TBD	Sunday, 04/26/15	0	11.5	11.5		
City Hall / Child Care	Police Officer	TBD	Sunday, 04/26/15	0	11.5	11.5		
Officer Total Hours				***0***	***34.5***	***34.5***	$71.01	$73.05
Officer Total Cost				***$0.00***	***$2,520.23***	***$2,520.23***		
Westlake Park	Police Assistant	TBD	Sunday, 04/26/15	0	4	4		
Lake Merced Country Club	Police Assistant	TBD	Sunday, 04/26/15	0	11.5	11.5		
Police Assistant Total Hours				***0***	***15.5***	***15.5***	$44.00	$45.63
Police Assistant Total Cost				***$0.00***	***$707.26***	***$707.26***		
Supervisor	Lieutenant	Mussman	Sunday, 04/26/15	0	11.5	11.5		
Lieutenant Total Hours				***0***	***11.5***	***11.5***	$99.59	$97.10
Lieutenant Total Cost				***$0.00***	***$1,116.65***	***$1,116.65***		
Total Hours				**0**	**61.5**	**61.5**		
Total Cost				**$0.00**	**$4,344.14**	**$4,344.14**		

Date	Position	Total Hours	Total Cost		
Monday, 04/20/15	Police Assistant	11.5	$499.79		
Monday, 04/20/15	Police Officer	11.5	$840.08		
Monday, 04/20/15	Police Lieutenant	11.5	$1,141.55		
				Total:	$2,481.42
Tuesday, 04/21/15	Police Assistant	11.5	$499.79		
Tuesday, 04/21/15	Police Officer	11.5	$840.08		
Tuesday, 04/21/15	Police Lieutenant	11.5	$1,141.55		
				Total:	$2,481.42
Wednesday, 04/22/15	Police Assistant	15.5	$707.26		
Wednesday, 04/22/15	Police Officer	34.5	$2,520.23		
Wednesday, 04/22/15	Police Lieutenant	11.5	$1,141.55		
				Total:	$4,369.04
Thursday, 04/23/15	Police Assistant	15.5	$707.26		
Thursday, 04/23/15	Police Officer	34.5	$2,520.23		
Thursday, 04/23/15	Police Lieutenant	11.5	$1,141.55		
				Total:	$4,369.04
Friday, 04/24/15	Police Assistant	15.5	$707.26		
Friday, 04/24/15	Police Officer	34.5	$2,520.23		
Friday, 04/24/15	Police Lieutenant	11.5	$1,116.65		
				Total:	$4,344.14
Saturday, 04/25/15	Police Assistant	15.5	$707.26		
Saturday, 04/25/15	Police Officer	34.5	$2,520.23		
Saturday, 04/25/15	Police Lieutenant	11.5	$1,116.65		
				Total:	$4,344.14
Sunday, 04/26/15	Police Assistant	15.5	$707.26		
Sunday, 04/26/15	Police Officer	34.5	$2,520.23		
Sunday, 04/26/15	Police Lieutenant	11.5	$1,116.65		
				Total:	$4,344.14
Total		**376.5**	**$26,733.34**		$26,733.34

TRAFFIC AND SECURITY SERVICES AGREEMENT

This **TRAFFIC AND SECURITY SERVICES AGREEMENT ("Agreement")** is made and entered into as of the _____ day of _______________, 2015 by and between the IMG Worldwide, Inc., and the City of Daly City ("Daly City").

BACKGROUND

A. LPGA is hosting the Swinging Skirts Classic Golf Tournament at the Lake Merced Golf and Country Club to be held from April 20-26, 2015 (the "Event").

B. It is estimated that the Swinging Skirts Classic could bring as many as 10,000 spectators per day to the Lake Merced Golf and Country Club and surrounding areas. Due to the increase in vehicle and pedestrian traffic, as well as the need to provide a secure environment for patrons and residents, the Daly City Police Department will need to provide an increased level of service during the Event.

C. Daly City has prepared a staffing plan involving on-duty and off-duty personnel assigned on an overtime basis and the City has estimated the cost of providing such services to the LPGA by way of IMG (International Management Group) Worldwide without the use of taxpayer money.

D. Daly City and IMG Worldwide desire to enter into this Agreement to set forth the agreement between the parties in connection with traffic and security provided by the Daly City Police Department during the Event.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IMG Worldwide and Daly City agree as follows:

1. <u>Term</u>

The term of this Agreement shall be for a period commencing upon execution of this Agreement and continuing until April 27, 2015; <u>provided</u>, <u>however</u>, that each party shall be obligated to fulfill its obligations which are accrued but unpaid or not performed as of the date of termination.

2. <u>Scope of Services</u>

City agrees to provide designated police officers to provide traffic and security during the Event. Specifically, the City will provide designated police officers for up to 5 traffic and security posts up to 12 hours each day during the Event. The scope of services is set forth more specifically in Exhibit A to the Agreement, which is attached and incorporated herein by reference.

3. Payment for Services

In consideration therefore, the IMG Worldwide agrees to reimburse the City for the services of the designated police officers at the estimated cost of **$26,733.34**, which may be greater or less than the actual costs to deliver such services. The City will provide detailed invoices to IMG Worldwide for reimbursement of actual costs to provide such services during the Event. IMG Worldwide agrees to provide payment in accordance with the hourly rates of each designated officer as set forth in Exhibit A.

4. Method of Payment.

During the term of the Event, and following the Event, the City will submit an invoice to IMG Worldwide, setting out the number of officers assigned and the actual number of hours each officer worked. Upon receipt of such invoice, IMG Worldwide agrees to compensate the City within thirty (30) days of receipt of such invoice.

5. Records

The parties shall both maintain complete and accurate records, and books of account in accordance with generally accepted accounting principles, with respect to the services provided under this Contract.

6. Integration and Amendment

This Agreement, including the contents of any and all documents incorporated by reference, comprises the entire Contract and Agreement between the parties. There are no promises, terms, conditions or obligations other than those contained herein or incorporated by reference hereunder. Any amendments, additions, supplements or deletions to this Agreement must be in writing, with the mutual consent of the parties and signed by the parties. No action shall be taken pursuant to any such amendment, addition, supplement or deletion prior to the execution of such written instrument.

7. Indemnification

IMG Worldwide shall indemnify, defend and hold harmless the City, its officers, officials, agents and employees from and against any and all claims, suits, actions, judgments, fines, penalties, loss, damage, cost or expense, whether direct or indirect, due to bodily injury, personal injury, death, sickness or property damage (including loss of use thereof) arising out of the activities the subject of this Contract. Indemnification includes, claims of injury, medical costs and/or lost wages to the Employed Officer(s) for his or her injuries incurred by way of this secondary employment, such claims are those that would be covered under Workers Compensation and/or pursuant to California Labor Code §4850.

The duty to indemnify and hold harmless as set forth above, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Control Over Personnel

The City does not relinquish any of its otherwise existing control or ability to monitor, supervise or discipline its employees by virtue of entering into this Agreement. Each officer or employee who may perform services as a result of this Agreement still must adhere to the established orders, policies and procedures of the Police Department and/or City.

IMG Worldwide understands and agrees that all Police Department personnel performing under the scope of this Agreement continue to have the obligation of any on-duty or off-duty police officer to prevent the commission of crime occurring in his or her presence; and that Team's worker's compensation insurance, as required by the State of California, shall cover employed Daly City Police Officers during the performance of services under the scope of this Agreement

9. Governing Law

This Contract and all interpretations thereof shall be governed by the laws of the State of California.

10. Relationship of the Parties. The parties agree that this Agreement does not and shall not be construed as or constitute an agency, partnership or joint venture, or other fiduciary or confidential relationship between IMG Worldwide and Daly City.

11. Contract Liaison

Captain Patrick Hensley of the Daly City Police Department shall be the Contract Liaison for the purposes of this Contract on behalf of the City and any and all inquiries, correspondence or other communication shall be addressed to: Captain Patrick Hensley, Daly City Police Department, 333 90th Street, Daly City, CA 94015. However, only the City can authorize any change, amendment or interpretation of this Contract or its terms.

Ben Freeman shall be the Contract Liaison for the purposes of this Contract on behalf of IMG Worldwide and any and all inquiries, correspondence or other communication shall be addressed to: Ben Freeman, Swinging Skirts Classic LPGA Tournament, IMG Worldwide, 304 Park Avenue South, 5th Floor, New York, NY 10010.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date and year first above written.

CITY OF DALY CITY

By: ______________________________

Name: ______________________________

Title: ______________________________

INTERNATIONAL MANAGEMENT GROUP

By: ______________________________

Name: ______________________________

Title: ______________________________

City Council Meeting Agenda Report

Item # _____

Meeting Date: March 23, 2015

Subject: **Home Funds for 6800 Mission Street Affordable Housing Development**

Recommended Action

Authorize execution of a HOME Loan Agreement and HOME Regulatory Agreement with Mid-Peninsula The Farm, Inc. for the development of affordable housing at 6800 Mission Street.

Background

The City annually receives an allocation of HOME funds from the Department of Housing and Urban Development (HUD) to be used in the production of affordable housing. On May 12, 2014 the City approved a disposition and development agreement with Mid-Peninsula The Farm, Inc., an experienced Community Housing Development Organization (CHDO), to acquire property and develop a 52-unit affordable housing development. At the time, the City had already allocated a total of $1,157,997 in HOME funds for the project, the sum of the City's HOME funds over several program years available for development. On June 23, 2014, the City Council approved a resolution to allocate to the project an additional $337,000 of future HOME funds anticipated to be received in FY15-16 and FY16-17.

Discussion

HOME funds have commitment and disbursement deadlines; $848,655 of the City's balance of HOME funds must be committed by August 31, 2015 and $216,504 of the HOME funds must be disbursed by July 31, 2015.

The City could not enter into a formal written agreement for the HOME funds allocated to the project until all other funding necessary for the project had been secured. The allocation and "pre-commitment" of the HOME funds was necessary to make the project competitive for the 9% Low Income Housing Tax Credit allocation process. The project scored high but was unfortunately unsuccessful for funding in the highly competitive funding process. As a result, Mid-Peninsula The Farm, Inc. applied for the 4% Low Income Housing Tax Credits. It will be awarded the 4% Low Income Housing Tax Credits later this month. At that point, it will have secured all the necessary funding for the project to enable the City to formally enter into a written agreement committing up to $1,494,997 of HOME funds.

Staff has prepared the HOME Loan Agreement and HOME Regulatory Agreement which memorialize the terms and conditions for the use of the HOME funds. Finalization of these documents shall be subject to approval as to form and content by the City Attorney.

Once Mid-Peninsula The Farm, Inc. completes the loan closings on its various funding sources including the City's HOME funds, construction will begin shortly and is estimated to take about eighteen months.

Fiscal Impact

HOME funds for the 6800 Mission Street project will be drawn from HOME funds allocated to the City directly from HUD, and will not impact the City's General Fund. The execution of the HOME documents with Mid-Peninsula The Farm, Inc. will allow the City to meet its August 31, 2015 funding commitment deadline.

Staff is available to provide additional information desired by the Council.

Respectfully Submitted,

Betsy ZoBell
Housing and Community
Development Supervisor

Tatum Mothershead
Interim Economic and Community
Development Director

Attachments:
Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants
Affordable Housing Loan Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Daly City
City Hall
333 90th Street
Daly City, CA 94015-1895
Attention: City Clerk

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

Space above this line for Recorder's use

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

(HOME LOAN)

by and between

CITY OF DALY CITY

and

MP WESTLAKE ASSOCIATES, L.P.

AFFORDABLE HOUSING REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS
(HOME LOAN)

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (HOME Loan) (this "**Agreement**") is entered into effective as of __________, 2015 ("**Effective Date**") by and between the City of Daly City ("**City**") and MP Westlake Associates, L.P., a California limited partnership ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

R E C I T A L S

A. Owner is the owner of or has the right to acquire the real property located in the City of Daly City, California, known as San Mateo County Assessor's Parcel No. _________ and more particularly described in Attachment A attached hereto (the "**Property**").

B. Owner intends to construct, own and operate an affordable multi-family housing development on the Property consisting of fifty-two (52) units and related improvements, 78 parking spaces, and 2200 square feet of ground floor commercial space (the "**Project**").

C. The sponsor of the Project, Mid-Peninsula The Farm, Inc., has been certified as a community housing development organization ("CHDO") and controls the Owner in its capacity as sole member/manager of the general partner of Owner.

D. The Loan Agreement provides that the Restricted Units developed on the Property will be required to be available to Eligible Households at Affordable Rents (defined below) in accordance with this Agreement for a period of not less than twenty (20) years.

E. City has agreed to provide to Owner a loan of HOME Investment Partnership Program ("**HOME Program**") funds (the "**HOME Funds**") in an amount not to exceed One Million Four Hundred Ninety-Four Thousand Nine Hundred Ninety-Seven Dollars ($1, 494,997) (the "**Loan**") in order to provide financing for the construction and development of the Property. The Loan is evidenced by a Secured Promissory Note (the "**Note**") executed by Owner and dated as of the date hereof, and is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") dated as of the date hereof and executed by Owner for the benefit of City. The Deed of Trust will be recorded in the Official Records of San Mateo County ("**Official Records**") substantially concurrently herewith.

F. As a condition to its agreement to provide the Loan to Owner, City requires the Property to be subject to the terms, conditions and restrictions set forth herein.

G. The HOME Funds are provided to the City from the United States Department of Housing and Urban Development ("**HUD**") pursuant to the Cranston-Gonzales National Housing Act of 1990. The HOME Funds must be used by the City in accordance with 24 C.F.R. Part 92. The purpose of this Agreement is to evidence the Owner's compliance with the Loan requirements of the HOME Program and place such restrictions upon the use and transfer of the

Property, to ensure continued Project affordability, as required by the HOME Program regulations. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

A G R E E M E N T

1. Definitions. The following terms have the meanings set forth in this Section 1 wherever used in this Agreement or the attached exhibits and attachments.

"**Actual Household Size**" means the actual number of persons in the applicable household.

"**Adjusted for Family Size Appropriate for the Unit**" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code subject to the application of federal rules associated with Project financing sources.

"**Affordable Rent**" means the following amounts, less a utility allowance and other fees and charges required to be paid by tenants of the Project on a non-optional basis (subject to the limitations set forth in 24 C.F.R. 92.214(b)(3)): (i) for units that are restricted for rental to households with incomes of not more than fifty percent (50%) of AMI ("**50% Units**"), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of fifty percent (50%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, except that HUD may establish income ceilings higher or lower than fifty percent (50%) of AMI on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, as set forth in 24 C.F.R. Section 92.2. (ii) for units that are restricted for rental to Low Income Households with incomes of not more than [sixty] percent ([60]%) of AMI ("**[60]% Units**"), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of [sixty] percent ([60]%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, provided that after initial occupancy, tenant incomes in these units may rise up to 80% of AMI, and provided further that HUD may establish income ceilings higher or lower than sixty percent (60%) of AMI on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, as set forth in 24 C.F.R. Section 92.2.

"**Area Median Income**" **or** "**AMI**" means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by, and as published from time to time by, the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to Section 8 of the United States Housing Act of 1937.

"**Authorized Representative**" means the City Manager of the City of Daly City.

"**Claims**" is defined in Section 9.

"**Eligible Household**" means a household for which annual household income upon initial occupancy does not exceed the maximum income level for a HOME-Assisted Unit as specified in Section 1.1.

"**HOME-Assisted Units**" means (i) the 2 units that are restricted to occupancy by Very Low Income Households, and (ii) the 7 units that are restricted to occupancy by Low Income Households. All HOME-Assisted Units are "floating" units as defined in 24 C.F.R. 92.252(j).

"HOME Funds" has the meaning set forth in Recital E.

"**Indemnitees**" is defined in Section 9.

"**Low Income Household**" means persons or families whose incomes are 60 percent or less of the Area Median Income.

"**Maximum Qualifying Income**" is defined in Section 1.2.

"**Rent Restricted**" is defined in Section 1.1.

"**Very Low Income Household**" means low-income persons or families whose incomes are 50 percent of less of the Area Median Income.

Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the development and operation of a multifamily rental housing development with ground floor commercial space, in compliance with the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

1.1 Affordability Requirements. For a term of twenty (20) years commencing upon the date of issuance of a final certificate of occupancy or equivalent for the Project, not less than) two (2) of the HOME-Assisted Units in the Project shall be both Rent Restricted (as defined below) and occupied (or if vacant, available for occupancy) by Very Low Income Households, and not less than seven (7) of the HOME-Assisted Units in the Project shall be both Rent Restricted and occupied (or if vacant, available for occupancy) by Low Income Households.

In the event that recertification of tenant incomes indicates that the number of HOME-Assisted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in this Section 1.1, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) until the required income mix is achieved. A dwelling unit shall qualify as "**Rent Restricted**" if the gross rent charged for such unit does not exceed the Affordable Rent for the applicable household income category, subject to Section 1.2.

Notwithstanding anything to the contrary contained in this Agreement, if other Project lenders, Project investors or regulatory agencies restrict a greater number of units than restricted by this Agreement or require stricter household income eligibility or affordability requirements than those imposed hereby, the requirements of such other lenders, investors or regulatory agencies shall prevail.

1.2 Rents for HOME-Assisted Units. Rents for HOME-Assisted Units shall be limited to Affordable Rents for households of the applicable income limit specified in Section 1.1. City must review and approve rents proposed for the HOME-Assisted Units.

1.3

1.4 Notwithstanding the foregoing, no tenant qualifying for a HOME-Assisted Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's household income increases to exceed the qualifying limit for such HOME-Assisted Unit. A household which at initial occupancy qualifies in a particular income category shall be treated as continuing to be of such income category so long as the household's gross income does not exceed one hundred forty percent (140%) of the applicable income limit ("**Maximum Qualifying Income")**. In the event the gross household income of a household that qualified at the applicable income limit at initial occupancy exceeds the applicable income limit for a unit but does not exceed the Maximum Qualifying Income, that unit will continue to be considered as satisfying the applicable income limit if the unit remains Rent-Restricted.

If upon recertification of tenant incomes, Owner determines that a tenant has a household income exceeding the Maximum Qualifying Income for such tenant's unit as set forth in Section 1.1, the tenant shall be permitted to continue to occupy the unit, and upon expiration of the tenant's lease and upon sixty (60) days' written notice, Owner may increase the rent for such unit to the lesser of one-twelfth of thirty percent (30%) of the tenant's actual household income or the fair market rent, and Owner shall rent the next available unit to a tenant whose household income does not exceed the applicable income limit in order to achieve the affordability requirements of this Agreement.

1.5 Manager's Unit. One (1) dwelling unit in the Project may be used as a resident manager's unit, and shall be exempt from the occupancy and rent restrictions set forth in this Agreement.

1.6 No Condominium Conversion. Owner shall not convert the residential units in the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential units in the Project during the term of this Agreement.

1.7 Non-Discrimination; Compliance with Fair Housing Laws.

2.5.1 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project, including but not limited to 24 C.F.R. 92.351(a). Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto. Owner's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253(d), and any modifications thereto.

2.5.2 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

"Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section

1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(b) (1) In Leases, the following language shall appear:

“The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property 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 of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(c) In Contracts

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

2.5.3 Other Lease Provisions. Owner may not permit the lease to contain any provision that is prohibited by 24 C.F.R. Section 92.253(b) and any amendments thereto. Owner 's form of lease must include any provisions necessary to comply with the requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs. Any termination of a lease (other than default by tenant) or refusal by Owner to renew must be in accordance with applicable law.

2.4.3 Units Available to the Disabled. Owner shall construct the Project to comply with all applicable federal and state accessibility requirements for disabled persons, including the Federal Fair Housing Act, Section 504 of the Rehabilitation Act of 1973 ("Section 504"), Title II and/or Title III of the Americans with Disabilities Act of 1990, and Title 24 of the California Code of Regulations (Collectively, the "Accessibility Requirements"). In compliance with Section 504 a minimum of three (3) Units must be fully accessible to households with a mobility impaired member and an additional two (2) Units must be fully accessible to hearing and/or visually impaired persons.

2. Reporting Requirements; Access to Information; Inspections.

2.1 Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each HOME-Assisted Unit, and on every anniversary thereafter the information required pursuant to 24, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

(i) The identity of each household member; and

(ii) The total gross household income;

Owner shall retain such certificates for not less than five (5) years, and upon City's request, shall provide copies of such certificates to City and make the originals available for City inspection.

2.2 Annual Report; Inspections. Following completion of Project construction, by not later than April 30 of each year during the term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City and HUD, together with a certification that the Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; and (vii) the information required by Section 2.1 and 24 C.F.R. 92.203.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City or HUD may reasonably request from time to time in order to demonstrate compliance with this Agreement and 24 C.F.R. 92.203. The Annual Report shall conform to the format requested by City and HUD; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits or tax-exempt bond financing, Owner may satisfy the requirements of this Section 3.2 that pertain to tenant income certification and rents by providing City with a copy of compliance reports required in connection with such financing.

In addition to the information described above, the Annual Report shall include the following:

(i) A Project income and expense statement for the reporting period;

(ii) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments; and

(iii) A financial audit of the books and records of the Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant. City may require the audit to be accompanied by a supplemental report prepared in accordance with City's requirements.

City may, from time to time request additional or different information, and Owner shall promptly supply such information in the reports required hereunder.

2.3 Maintenance of Records.

3.3.1 Owner shall maintain all records regarding the construction of the Project for five (5) years after final payment and all other pending matters are closed. Owner shall also maintain tenant leases, income certifications and other matters related to the leasing of the affordable units for a period of five (5) years after the final date of occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days from such notice to correct any specified deficiency in the records, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within fifteen (15) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.3.3 All records maintained by Owner pursuant to this Agreement are to be (i) maintained in compliance with all applicable HUD records and accounting requirements, and (ii) open to and available for inspection and copying by HUD and its authorized representatives at reasonable intervals during normal business hours; provided however, records pertaining to tenant income verifications, rents, and Project inspections are subject to HUD inspection for five (5) years after expiration of the term of this Agreement. Owner is subject to the Uniform Administrative Requirements set forth in 24 C.F.R 92.505 and the audit requirements set forth in 24 C.F.R. 92.506 during the term of this Agreement.

The Owner will create and follow a tenant participation plan as required in 24 C.F.R. 92.303.

2.4 Access to Records; Inspections.

3.4.1 Owner shall provide City and its authorized agents and representatives access to any books, documents, papers and records of the Project for the purpose of making audits, examinations, excerpts and transcriptions.

3.4.2 With 48-hours notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Project and the Property.

3. Term of Agreement.

3.1 Term of Restrictions. This Agreement shall remain in effect through the 20th anniversary of the issuance of the final certificate of occupancy or equivalent for the Project, unless the term is extended by mutual agreement of the Parties.

3.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof, as such may be extended pursuant to Section 3.1, regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan or Note, or (iii) any reconveyance of the Deed of Trust.

3.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term as such may be extended pursuant to Section 3.1.

4. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

5. Property Management; Repair and Maintenance; Marketing.

5.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Project. Owner's actions with respect to the Project shall at all times be in full conformity with all requirements imposed on projects assisted with HOME Funds as contained in 42 U.S.C. Section 12701, et seq., 24 C.F.R. Part 92, and other implementing rules and regulations.

5.2 Management Entity. City shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Project. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves MidPen Property Management Corporation, a California nonprofit public benefit corporation, as the initial management entity for the Project. Any subsequent management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed.

5.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with 24 C.F.R. Section 92.251 and all applicable state, federal, and local laws, ordinances, codes, and regulations including but not limited to the lead-based paint requirements in 24 C.F.R. part 35. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security measures for the Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.3.1 Additional Requirements. All construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Daly City business license if required under local law. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

5.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any 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 Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law.

5.5 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

5.6 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Attachment B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Attachment B.

5.7 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section 6.7 the requirements of such lenders and investors shall prevail.

5.8 Marketing.

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

(b) Upon receipt of the Marketing Plan, the City shall promptly review the Marketing Plan and shall approve or disapprove it within thirty (30) days after submission. If the Marketing Plan is not approved the City will give Owner specific reasons for such disapproval, and Borrower shall submit a revised Marketing Plan within thirty (30) days following Owner's receipt of the City's written disapproval. If the City does not approve the revised Marketing Plan because Owner fails to make specific revisions requested by the City, Owner shall be in default hereunder.

The Owner and the Management Agent shall be responsible for the promotion and other marketing efforts for rental of the Units. Prior to the initial lease up of the Units, the Owner and the Management Agent shall develop a marketing plan in order to affirmatively market the Units with the goal of attracting all qualified persons without regard to race, color, creed, religion, sex, sexual orientation, age, marital status, national origin, source of income (e.g. SSI), ancestry, or disability. The marketing plan shall be submitted to and approved by the Agency prior to marketing the Units. The Owner and the Management Agent shall comply with the provisions of Exhibit B, attached hereto, entitled "Affirmative Marketing Strategy."

The Owner and the Management Agent shall select tenants on a non-discriminatory basis, consistent with the provisions of this Agreement.

6. Recordation; Subordination. This Agreement shall be recorded in the Official Records of San Mateo County. Owner hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 6, and to provide such evidence thereof as City may reasonably request. Notwithstanding the foregoing, the City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the Financing Plan (as defined in the Loan Agreement) as it may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

7. Transfer and Encumbrance.

7.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

7.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required by the City; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a Transfer to a tax-exempt entity under the direct control of or under common control with MidPen Housing Corporation, a California nonprofit public benefit corporation ("**MidPen**"); (vi) a Transfer to a limited partnership in which a tax-exempt affiliate of MidPen is the managing general partner ("**Approved Partnership**"); (vii) the admission of limited partners and any transfer of limited partnership interests in accordance with Owner's or the Approved Partnership's agreement of limited partnership, as applicable (the "**Partnership Agreement**"); (viii) the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, provided that the replacement general partner is an entity reasonably satisfactory to City; or (ix) the transfer of the general partner's interest to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, provided such replacement general partner is reasonably satisfactory to City.

8.3 <u>Requirements for Proposed Transfers</u>. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this <u>Section 8.3</u> shall not apply to Transfers described in clauses (i), (ii), (iii), (iv), (v) and (vii) of <u>Section 8.2</u>, and solely with respect to removal of the general partner by the investor limited partner for a default under the Partnership Agreement, clause (viii) of <u>Section 8.2</u>, provided that the provisions of this <u>Section 8.3</u> shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (viii) of <u>Section 8.2</u>):

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement;

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request;

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement and the other Loan Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement; and

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Project by Owner shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies including without limitation, acceleration of the Loan and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Improvements, or the Property in violation of Section 7.

8.5 Encumbrances. Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose City's Deed of Trust and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

8. Default and Remedies.

8.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(i) The occurrence of a Transfer in violation of Section 7 hereof;

(ii) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within five (5) business days;

(iii) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(iv) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(v) A default arises under the Loan Agreement, the Note, or the Deed of Trust and remains uncured beyond the expiration of any applicable cure period; and

(vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 8.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than sixty (60) days from receipt of the notice of default.

Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to Owner's limited partner(s) in accordance with Section 11.3 . Owner's limited partner(s) shall have the same right as Owner to cure or remedy any default hereunder within the cure period provided to Owner extended by an additional sixty (60) days; provided however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general partner of Owner in order to cure such default, then the cure period shall be extended until the date that is sixty (60) days following the removal and replacement of the general partner of Owner, provided that the limited partner(s) have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement, and such cure shall be accepted or rejected on the same basis as if tendered by Owner.

8.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

(i) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(ii) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the Deed of Trust;

(iii) For violations of obligations with respect to rents for HOME-Assisted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent; and

(iv) Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

9. Indemnity. Owner shall indemnify, defend (with counsel approved by City) and hold City and its elected and appointed officers, officials, employees, agents, and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation 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**") arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 9 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Owner that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement or the Loan Agreement.

10. Miscellaneous.

10.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

10.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

10.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section 10.3. All such notices shall be sent by: (a) personal delivery, in which case notice is effective upon delivery; (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City:	City of Daly City City Hall 333 90th Street Daly City, CA 94015-1895 Attention: City Manager
Owner:	MP Westlake Associates, L.P. c/o MidPen Housing Corporation 303 Vintage Park Drive, Suite 250 Foster City, CA 94404 Attention: President
With a copy to:	Wells Fargo Affordable Housing Community Development Corporation MAC D1053-170 301 South College Street, 17th Floor Charlotte, NC 28202-6000 Attention: Director of Asset Management

10.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

10.5 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

10.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

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

10.8 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

10.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

10.10 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of San Mateo County, California or in the Federal District Court for the Northern District of California.

10.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

10.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

10.13 Entire Agreement; Exhibits and Attachments. This Agreement, together with the DDLA, the Note, the Deed of Trust and the other Loan Documents contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Attachments A and B, attached hereto are incorporated herein by this reference.

10.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY:

City of Daly City
By: ___________________________
Name: _________________________
Its: ___________________________

ATTEST:

By:___________________________
, City Clerk

APPROVED AS TO FORM:

By:___________________________
, City Attorney

OWNER:

MP Westlake Associates, L.P.,
a California limited partnership

By: MP Westlake LLC,
a California limited liability company,
its general partner

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

By: ___________________________
Matthew Franklin,
Assistant Secretary

ACKNOWLEDGEMENTS

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

State of California)

County of ____________________)

On______________ before me, ______________________________, a Notary Public in and for said State, personally appeared, ____,
proved to me the basis of satisfactory evidence to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature______________________________

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

State of California)

County of ____________________)

On______________ before me, ______________________________, a Notary Public in and for said State, personally appeared, ____,
proved to me the basis of satisfactory evidence to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature______________________________

Attachment A

PROPERTY

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

Attachment B

INSURANCE REQUIREMENTS

Prior to initiating work on the Project and continuing through throughout the term of this Agreement, Owner shall obtain and maintain the following policies of insurance:

(a) a commercial general liability policy in the amount of Two Million Dollars ($2,000,000) each occurrence, Two Million Dollars ($2,000,000) annual aggregate, together with Three Million Dollars ($3,000,000) excess liability coverage, or such other policy limits as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) a comprehensive automobile liability coverage in the amount of One Million Dollars ($1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Owner and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Owner and Owner's general partners shall furnish or cause to be furnished to City evidence satisfactory to City that Owner and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars ($1,000,000) per accident.

(d) Upon commencement of construction and continuing until issuance of a Certificate of Completion, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(e) Upon completion of Project construction, Owner shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(f) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payee as its interests may appear.

(g) Prior to commencement of construction, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by City's Risk Manager, Owner shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(h) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

(i) Coverage provided by Owner shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Owner shall furnish the required certificates and endorsements to City prior to the commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

(j) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, City's Risk Manager. At the option of and upon request by City's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(k) Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstances, including, but not limited to, changes in the purchasing power of the dollar and the litigation climate in California. Within thirty (30) days following City's delivery of written notice of any such adjustments, Developer shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

AFFORDABLE HOUSING LOAN AGREEMENT

(HOME LOAN)

by and between

CITY OF DALY CITY

and

MP WESTLAKE ASSOCIATES, L.P.

______________, 2015

THIS AFFORDABLE HOUSING LOAN AGREEMENT (this "**Agreemen**t") is entered into effective as of **_______________**, 2015 ("**Effective Date**") by and between the City of Daly City ("**City")** and MP Westlake Associates, L.P., a California limited partnership ("**Developer")**. The City and the Developer are collectively referred to herein as the "**Parties**."

RECITALS

A. Mid-Peninsula The Farm, Inc. ('The Farm") is a Community Housing Development Organization ("CHDO")

B. The Farm has a contractual right to acquire the property located in Daly City, California, and more particularly described in Exhibit A attached hereto (the "**Property**") from the Agency.

C. The Farm is the sole member and manager of the general partner of Developer.

D.Developer intends to construct an affordable multi-family residential development on the Property consisting of up to fifty-one (51) affordable apartments, one (1) resident manager's apartment, ground floor commercial space, and related improvements, including 78 parking spaces (all of the foregoing, collectively, the "**Project**").

E. Upon satisfaction of the conditions precedent set forth in this Agreement and subject to the terms and conditions set forth herein, the City will provide a loan of HOME Investment Partnerships Act funds ("HOME Funds") to Developer to assist in financing the construction and development of the Property. The HOME Funds are provided from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Housing Act of 1990. The HOME Funds must be used by the City in accordance with 24 C.F.R. Part 92 (the "HOME Regulations").

F. Concurrently with the execution of this Agreement, among other documents, Developer will execute: a secured promissory note in the amount of the City loan, a deed of trust which will provide City with a security interest in the Project and the Property, and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (HOME Loan) which will require Project rents to be affordable to low-income households for a term of not less than twenty (20) years.

G. A material inducement to City to enter into this Agreement is the agreement by Developer to develop the Project within the time periods specified herein and in accordance with the provisions hereof, and the City would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to take such actions and complete such work in accordance with such provisions and within such time periods.

H. The City has made a categorical determination of exemption pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA").

I. In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347) ("NEPA"), the City has completed and approved all applicable environmental review for the activities proposed to be undertaken under this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

DEFINITIONS; EXHIBITS; EFFECTIVE DATE

1.1 Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

"Affordable Rent" is defined in the Regulatory Agreement.

"**Approved Partnership**" is defined in Section 7.3.

"Area Median Income" is defined in the Regulatory Agreement.

"CEQA" has the meaning set forth in Paragraph F of the Recitals.

"Certificate of Completion" is defined in Section 4.12.

"City" means the City of Daly City , a municipal corporation.

"City's Authorized Representative" means the City Manager of the City of Daly City.

"City Council" means the City Council of the City of Daly City.

"City's Permitted Exceptions" is defined in Section 2.7.

"**Claims**" is defined in Section 4.14.

"**Closing Date**" or "**Close of Escrow**" shall be the date that escrow closes for the Loan.

"**Construction Plans**" is defined in Section 4.6.

"**Deed of Trust"** is defined in Section 2.3.9.

"**Environmental Laws**" is defined in Section 6.6.2.

"Financing Plan is defined in Section 2.3.2.

"**Hazardous Material**" is defined in Section 6.6.1.

"**HOME**" means the HOME Investment Partnership Act Program pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12705 et seq.), as amended.

“**HOME-Assisted Units**” the 9 units as defined in the Regulatory Agreement .

“**HOME Funds**” has the meaning set forth in Paragraph C of the Recitals.

“**HOME Regulations**” has the meaning set forth in Paragraph C of the Recitals.

“**HOME Reporting Term**” means the period beginning on the Completion Date and ending on the twentieth (20th) anniversary of the Completion Date.

“**HUD**” has the meaning set forth in Paragraph C of the Recitals.

“**Improvements**” is defined in Section 2.3.4.

“**Indemnitees**” is defined in Section 4.14.

“**Lender’s Title Policy”** is defined in Section 2.7.

“**Loan”** is defined in Section 3.1.

“**Loan Documents**” means collectively, this Agreement, the Note, the Deed of Trust, and the Regulatory Agreement.

“**NEPA**” has the meaning set forth in Paragraph G of the Recitals.

“**Note”** is defined in Section 2.3.9.

“**Official Records”** means the Official Records of San Mateo County.

“**Partnership Agreement**” is defined in Section 7.3.

“**Project**” is defined in Recital B and further described in Section 2.3.4.

“**Property”** is defined in Recital A.

“**Regulatory Agreement**” is defined in Section 2.3.9.

“**Transfer**” is defined in Section 7.2.

ARTICLE II

REPRESENTATIONS; EFFECTIVE DATE; CONDITIONS PRECEDENT TO LOAN CLOSING

2.1 Developer's Representations. Developer represents and warrants to City as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Developer shall immediately give written notice of such fact or condition to City. Developer acknowledges that City shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of City.

(a) Organization. Developer is a limited partnership, duly organized and in good standing under the laws of the State of California and in good standing under the laws of the State of California. Developer's sole general partner is controlled by the CHDO, which is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Developer shall require that The Farm maintain its CHDO status for the term of the Regulatory Agreement.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered, 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 or in connection with to this Agreement, have been executed and delivered, or will be 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 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 or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of the above-named documents.

(d) Valid and Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered or will be 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 Developer, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to or in connection with 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 binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) Pending Proceedings. Except as disclosed in writing to the City prior to execution of this Agreement, Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and, to Developer's current actual knowledge, there are no claims, actions, suits or proceedings pending or threatened against or affecting Developer or the Property, at law or in equity, before or by any court, board, commission or agency. Developer is not the subject of any bankruptcy or insolvency proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Developer's assets has been made.

2.2 Effective Date. The obligations of Developer and City hereunder shall be effective as of the Effective Date which date is set forth in the preamble to this Agreement.

2.3 Conditions Precedent. City's obligation to make the Loan to Developer is conditioned upon the satisfaction of all of the requirements set forth in each subsection of this Section 2.3 and all of the requirements set forth in Section 2.7 unless any such condition is waived by City acting in the discretion of the City's Authorized Representative. Prior to the Closing Date, Developer shall satisfy all of the following conditions:

2.3.1 Due Authorization and Good Standing.

(i) Developer shall have delivered to City a certificate of good standing, certified by the Secretary of State, indicating that Developer is properly organized, in good standing, and authorized to do business in the State of California.

(ii) Developer shall have delivered to City of each of the following: (a) a certified resolution indicating that Developer has authorized the transactions contemplated by this Agreement and that the persons executing the Loan Documents on behalf of Developer have been duly authorized to do so, (b) certified copy of Developer's LP-1 andamended and restated partnership agreement; and (c) verification of the tax-exempt status of CHDO.

2.3.2 Financing Plan. Developer shall has submitted to City and City has reviewed and approved Developer's plan for financing the acquisition of the Property and the construction and permanent financing of the Project (hereinafter the "**Financing Plan**"). If the Developer pursues additional funds as reported in approved Financing Plan, Developer must inform the City as another HOME subsidy analysis will have to be completed.

2.3.3 Project Scope; Conditions of Approval. The Project will include the construction of a multi-family residential development consisting of: (i) fifty-one (51) apartments, including 20 one bedroom units, 15 2 bedroom units and 16 3 bedroom units; (ii) one 2bedroom manager's unit; and (iii)78 parking spaces, common areas and facilities including a lobby, community room, computer lab and courtyard with tot lot; all of the foregoing are collectively hereinafter referred to as the "**Improvements**."

2.3.4 Environmental Review. All environmental review necessary for the construction of the Project has been completed, and Developer has provided the City evidence of planned compliance with all NEPA and CEQA requirements and mitigation measures applicable to construction, and evidence of compliance with all NEPA and CEQA requirements and mitigation measures applicable to preconstruction.

2.3.6 Permits and Approvals; Cooperation. Developer acknowledges that the execution of this Agreement by City does not relieve Developer from the obligation to apply for and to obtain from the City and all other agencies with jurisdiction over the Property, all necessary approvals, entitlements, and permits for the development of the Project. Prior to the Closing Date, Developer shall have obtained all entitlements and approvals required for the development and operation of the Project, including without limitation, building permits and use permits or shall provide evidence satisfactory to City that receipt of such permits and approvals is subject only to such conditions as City may reasonably approve. City staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the development and operation of the Project as contemplated by this Agreement.

2.3.7 Payment of Fees. Developer shall have paid when due all customary and reasonable fees and charges in connection with the processing of all applicable City permits and approvals.

2.3.8 Construction Plans, Budget and Schedule. Prior to the Closing Date, City shall have approved the construction budget and schedule for the Project, and City shall have approved the Construction Plans and specifications for the Project.

2.3.9 Execution, Delivery and Recordation of Documents. Developer shall have executed, acknowledged as applicable, and delivered to City this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation a promissory note (the **"Note"**), a deed of trust (the **"Deed of Trust"**), and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Regulatory Agreement**"). Concurrently with the Closing, the Deed of Trust and the Regulatory Agreement shall be recorded in the Official Records.

2.3.10 Insurance; Payment and Performance Bonds. Developer shall have provided evidence reasonably satisfactory to City that Developer has obtained insurance coverage meeting the requirements set forth in Article X.

2.4 Escrow. City and Developer shall open escrow at the office of Old Republic Title Company located in Oakland, California, or such other title company as the Parties may agree upon ("**Title Company**" or "**Escrow Agent**") in order to consummate the closing of escrow for the transactions contemplated hereby.

2.5 Costs of Closing and Escrow. Developer shall pay for the cost of any lender's policy of title insurance that City elects to acquire in connection with the transactions contemplated hereby. City and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as City or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by City and Developer, shall serve as escrow instructions for the Closing.

2.6 Closing. The Closing Date shall be a date that is mutually acceptable to the Parties. City acknowledges that Developer cannot submit a parcel map until the City has transferred the Property to the Developer, which parcel map must be recorded prior to Developer's closing of its construction financing. Prior to the Close of Escrow, Developer shall deposit into escrow the Loan Documents, executed and acknowledged as applicable and

Developer's share of closing costs. City shall deposit into escrow executed copies of the Loan Documents to which City is a party, and provided that all conditions precedent to Closing have been satisfied or waived. On the Closing Date the Escrow Agent shall cause the Deed of Trust and the Regulatory Agreement to be recorded in the Official Records.

2.7 Conditions to Closing. City's obligation to fund the Loan is conditioned upon the satisfaction of the terms and conditions set forth in this Section 2.7.

a. No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other Loan Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

b. Representations. All representations and warranties of Developer contained herein or in any other Loan Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow.

c. Satisfaction of Conditions Precedent. All conditions set forth in Section 2.3 and each subsection thereof shall have been satisfied.

d. Lender's Title Policy. The Title Company shall, upon payment of the premium therefor, be committed to issue an ALTA Lender's Policy of Title Insurance for the benefit and protection of City ("**Lender's Title Policy"**) in the amount of the Loan, insuring that the lien of the Deed of Trust is subject only to title exceptions and such other defects, liens, conditions, encumbrances, restrictions, easements and exceptions as City may reasonably approve in writing (collectively, "**City's Permitted Exceptions**"), showing title to the Property vested in Developer, and containing such endorsements as City may reasonably require, with the cost of such Lender's Title Policy to be paid by Developer.

ARTICLE III

CITY FINANCIAL ASSISTANCE

3.1 Loan and Note. In order to increase the affordability of the Project, City agrees to provide a permanent loan (the "**Loan**") to Developer in the principal amount not to exceed One Million Four Hundred Ninety-Four Thousand Nine Hundred Ninety-Seven Dollars ($1, 494,997) in connection with the development of the Property from the City, upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by a secured promissory note in the amount of the Loan (the "**Note**") dated as of the Closing Date and executed by Developer.

3.2 Interest Rate; Payment Dates; Cost Savings; Maturity Date. The outstanding principal balance of the Note will bear simple interest at a rate equal to three percent (3%) per annum from the date of the transfer of the Property to Developer. Annual payments shall be due and payable on a residual receipts basis in accordance with the formula set forth in the Note commencing upon City's issuance of a final certificate of occupancy or equivalent for the Project. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the Loan Documents shall be payable in full on the date (the **"Maturity**

Date") which is the earlier of (i) the fifty-fifth (55th) anniversary of the date of issuance of the final certificate of occupancy or equivalent for the Project, or (ii) the fifty-seventh (57th) anniversary of the Loan origination date.

Notwithstanding the foregoing, the City shall have the right to accelerate the Maturity Date and declare all sums payable under the Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an Event of Developer Default.

3.3 Security. As security for repayment of the Note, Developer shall execute the Deed of Trust in favor of City as beneficiary pursuant to which City shall be provided a lien against the Property and the Improvements. The Deed of Trust shall be dated as of the Closing Date and shall be recorded in the Official Records on the Closing Date. The Deed of Trust may be subordinated only to such liens and encumbrances consistent with the approved Financing Plan as City shall approve in writing.

3.4 Prepayment; Acceleration.

(a) Prepayment. Developer shall have the right to prepay the Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Developer's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

(b) Due On Transfer or Encumbrance. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer absent the prior written consent of City of all or any part of or interest in the Property or the Project except as otherwise permitted pursuant to this Agreement.

3.5 Nonrecourse. The Note shall be non-recourse to Developer.

3.6 Conditions to Close of Loan. City's obligation to close the Loan is conditioned upon the satisfaction of all of the conditions set forth in Sections 2.3 and 2.7 and all of the following conditions:

(i) Developer's execution and delivery to City of this Agreement, the Note, the Deed of Trust, and the Regulatory Agreement.

(ii) Recordation of the Deed of Trust and the Regulatory Agreement in the Official Records.

(iii) Developer shall deposit into Escrow an executed and notarized deed of trust to be recorded against the property Developer owns.

(iv) The issuance by an insurer satisfactory to City of the Lender's Title Policy consistent with the requirements set forth in Section 2.7.

(vi) Developer's delivery to the City of evidence of all insurance coverage required pursuant to Article X;

(vii) Developer's delivery to City of certified copies of updated versions of any documents listed in Section 2.3.1 which have been amended since the date of delivery to the City.

3.7 Disbursements.

(a) Requests for Disbursements of HOME funds.

(i) Developer shall submit an expenditure report to the City for reimbursement of expenses previously approved by the City. The expenditure report shall include scope of services performed and other documentation supporting the requested reimbursement. The expenditure report shall be signed by the Developer's authorized agent. Payments under this Agreement shall be pursuant to submission and approval of the above mentioned expenditure reports.

(ii) Expenditure reports for reimbursement under the loan may be submitted to the City by no later than [INSERT DATE close to project completion]. The portion of the loan unexpended by this date, if any, may no longer be applied towards any expenses for the Project. The unexpended funds will be credited towards the amount represented in the Promissory Note which will be adjusted accordingly to reflect the actual amount reimbursed to the Contractor under this agreement.

(iii) All expenditure reports shall be certified for payment by the City unless the Director of the Economic & Community Development Department objects to the adequacy of the services rendered by Developer, the amount of billing or the adequacy of the documentation. The City shall state the specific nature of its objections to Developer's work in writing. City shall specify what actions or changes are necessary to make the work acceptable. Developer shall respond to City within 15 days of receipt of such objections. The parties to this Agreement shall meet to discuss such objections at the request of other parties.

(b) Amount of Disbursements.

(i) Developer shall request disbursements from the City of not less than $215,504 by June 30, 2015;

(ii) City shall disburse $1,157,997 of the Loan proceeds by September 1, 2016 pursuant to expenditure reports that comply with this Section 3.7.

(iv) City shall disburse an additional $337,000 utilizing 2015-16 and 2016-17 HOME funds. These funds may be disbursed only when the City's annual allocations of HOME funds have been memorialized in agreements with HUD. City has committed Housing Trust Funds to replace the estimated $213,000, if such amount is not available for disbursement from the 2015-16 allocation by November 1, 2015, and the City has committed Housing Trust Funds to replace the balance of $124,000 from the City's 2016-17 Agreement with HUD if such amount is not available for disbursement by November 1, 2016. In either event, such amount shall be disbursed by the City within 30 days after the outside date for each of the anticipated HOME disbursements

(v) The City shall withhold $10,000 of HOME proceeds so that the final draw of Loan proceeds shall not occur more than 120 days prior to completion of construction of the Project.

3.8 Use of HOME Loan Proceeds.

(a) Developer shall use HOME funds only for "eligible costs" and eligible "activities", as defined in 24 C.F.R.92.20 and 92.205, respectively.

(b) Eligible costs incurred more than 24 months prior to the date of this Agreement are not eligible for reimbursement with HOME funds.

(c) Developer may retain program income for eligible activities.

(d) Upon expiration of this Agreement Developer shall transfer to City any HOME funds on hand and any accounts receivable attributable to the use of HOME funds.

ARTICLE IV

DEVELOPMENT OF THE PROPERTY

4.1 Development Schedule. Subject to force majeure and Developer's receipt of a reservation of four percent (4%) federal low-income housing tax credits for the Project, Developer shall commence construction of the Project by not later than December 31, 2015, and shall diligently prosecute to completion the construction of the Improvements to enable the City to issue a final certificate of occupancy within twenty-four (24) months following commencement of construction, with construction targeted to be completed by not later than December 31, 2017. Developer shall use diligent and commercially reasonable efforts to perform Developer's obligations under this Agreement within the times periods set forth herein, and if no such time is provided, within a reasonable time, designed to permit issuance of a final certificate of occupancy by the date specified in this Section 4.1.

Subject to force majeure and the City's issuance of permits and approvals, Developer's failure to commence or complete construction of the Project in accordance with the time periods specified in this Section 4.1 shall be an Event of Developer Default hereunder.

4.2 Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of the Property, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. Except as expressly set forth herein, all costs of designing, developing and constructing the Project and compliance with the Conditions of Approval, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Developer and shall not be an obligation of the City.

4.3 Project Approvals. Developer acknowledges and agrees that execution of this Agreement by City does not constitute approval for the purpose of the issuance of building permits, does not limit in any manner the discretion of the City in such approval process, and does not relieve Developer from the obligation to apply for and obtain all necessary entitlements, approvals, and permits for the development of the Property, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the development of the Property (if any), and the completion of any required environmental review. Developer covenants that it shall obtain all necessary permits and approvals which may be required by the City or any other governmental agency having jurisdiction over the Property, and shall not commence construction work on the Project prior to issuance of building permits required for such work.

4.4 Conditions of Approval. Developer shall develop the Property in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the "**Conditions of Approval**").

4.5 Fees. Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City and all other agencies with jurisdiction over development of the Property in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project.

4.6 Construction Plans. Developer shall submit to City's Building Department detailed construction plans for each component of the Project (the "**Construction Plans**"). As used herein "**Construction Plans**" means all construction documents upon which Developer and Developer's contractors shall rely in developing the Project (including the building, landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the scope of development set forth herein and upon the approvals issued by the City for the Project, and shall not materially deviate therefrom without the express written consent of City. The Project shall be constructed in accordance with the HOME Regulations, including the property standards set forth in 24 C.F.R. 92.251.

4.7 Construction Pursuant to Plans. Developer shall develop each component of the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to the Project. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

4.8 Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the City for its written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by City after the Effective Date. Unless a proposed change is approved by City within thirty (30) days, it shall be deemed rejected. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

4.9 Rights of Access. For the purpose of ensuring that the construction of the Project is completed in compliance with this Agreement, Developer shall permit representatives of the City and/or HUD to enter upon the Property.

4.10 City Disclaimer. Developer acknowledges that the City is under no obligation, and the City neither undertakes nor assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the City as to the quality of the design or construction of the improvements or otherwise.

4.11 Defects in Plans. The City shall not be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that City does not, and shall not, waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. Developer's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

4.12 Certificate of Completion for Project. Promptly after completion of construction of the Project, City's issuance of a final Certificate of Occupancy or equivalent for the Project, and the written request of Developer the City will provide a certificate substantially in the form attached hereto as Exhibit B ("**Certificate of Completion**") provided that at the time such certificate is requested all applicable work has been completed. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the construction of the Project and development of the Property. At Developer's option the Certificate of Completion shall be recorded in the Official Records. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement.

4.13 Equal Opportunity. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction work on the Property, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

4.14 Prevailing Wage Requirements. If required by applicable federal and state law, Developer and its contractors and agents shall comply with California Labor Code Section 1720 *et seq*. and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. If applicable, Developer shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Developer's expense.

Developer shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation 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**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in connection with the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section 4.14 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer's indemnification obligations set forth in this Section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees.

4.15 Compliance with Laws. Developer shall carry out and shall cause its contractors to carry out the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, the property standards set out in 24 C.F.R. 92.251, and all applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code (if any), the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq*., Government Code Section 4450, *et seq*., Government Code Section 11135, *et seq*., the Federal Fair Housing Act, Section 504 of the Rehabilitation Act of 1973 and the Unruh Civil Rights Act, Civil Code Section 51, *et seq*.. Developer shall at all times be in full conformity with all requirements imposed on projects assisted with HOME Funds as contained in 42 U.S.C. Section 12701, et seq., 24 C.F.R. Part 92, and other implementing rules and regulations, and the requirements of the Violence Against Women Reauthorization Act of 2013 ((Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs. Developer shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Developer’s obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer’s deposit with City of any of the insurance policies described in this Agreement. Developer’s indemnification obligations set forth in this Section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees. Developer’s defense and indemnification obligations set forth in this Section 4.15 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project.

4.16 Liens and Stop Notices. Until the later of the date of reconveyance of the Deed of Trust or the expiration of the term of the Regulatory Agreement, Developer shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting the Project or the Property or any part thereof, Developer shall within twenty (20) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

4.17 Right of City to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property or any part thereof pursuant to and within the time period set forth in Section 4.16 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer’s expense and without further notice to Developer and all sums advanced by City for such purpose shall be part of the indebtedness secured by the Deed of Trust. In such event Developer shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Developer to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Property for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property. The City may (but has no 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 Property.

4.18 Performance and Payment Bonds. Prior to commencement of construction work on the Project, Developer shall cause its general contractor to deliver to the City copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of such Project component. The bonds shall name the City as co-obligee.

4.19 Insurance Requirements. Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article X.

4.20 HOME Program Requirements.

4.20.1 Developer shall comply with all applicable laws and regulations governing the use of the HOME Funds as set forth in 24 C.F.R. Part 92, including the requirements of the Regulatory Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the Loan funds, the applicable laws and regulations govern. During the HOME Reporting Term, these requirements are federal requirements, implemented by the City.

4.20.2 The laws and regulations governing the use of the Loan funds include (but are not limited to) the following:

(i) Environmental and Historic Preservation. 24 C.F.R. Part 58, which prescribes procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.

(ii) Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110, A-122, and A-133.

(iii) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24.

(iv) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 USC 794, et seq.); the Age Discrimination Act of 1975 (42 USC 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007;

Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608 and any other requirements under 24 C.F.R. 92.350.

(v) Lead-Based Paint. The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35.

(vi) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; 24 C.F.R. 570.606; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; 24 C.F.R. 92.353; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq. If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Developer shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits.

(vii) Discrimination against the Disabled. The requirements of the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto.

(viii) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection City with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time.

(ix) Uniform Administrative Requirements. The provisions of 24 C.F.R. 92.505 and 24 C.F.R. 570.502 regarding cost and auditing requirements.

(x) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Developer agrees to include the following language in all subcontracts executed under this Agreement:

(1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(2) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

(5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

(6) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(7) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

(xi) Labor Standards. The labor requirements set forth in 24 C.F.R. 92.354 and 24 C.F.R. 570.60; the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

(xii) Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 24.

(xiii) Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 C.F.R. Part 87.

(xiv) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800. If archeological, cultural, or historic period resources are discovered during construction, all construction work must come to a halt and Developer shall immediately notify the City. Developer shall not shall alter or move the discovered material(s) until all appropriate procedures for "post-review discoveries" set forth in Section 106 of the National Historic Preservation Act have taken place, which include, but are not limited to, consultation with the California State Historic Preservation Officer and evaluation of the discovered material(s) by a qualified professional archeologist.

(xv) Flood Disaster Protection. The requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) (the "Flood Act"). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of the Flood Act, for use in an area identified by HUD as having special flood hazards which is not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of the Flood Act. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program is subject to the mandatory purchase of flood insurance requirements of Section 102(a) of the Flood Act. If the Property is located in an area identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., the property owner and its successors or assigns must obtain and maintain, during the ownership of the Property, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under -Section 102(s) of the Flood Act. Such provisions are required notwithstanding the fact that the construction on the Property is not itself funded with assistance provided under this Agreement.

(xvi) Religious Organizations. If the Developer is a religious organization, as defined by the CDBG and/or HOME requirements, the Developer shall comply with all conditions prescribed by HUD for the use of HOME Funds and CDBG Funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. 92.257 and 24 C.F.R. 570.200(j).

(xvii) Violence Against Women. The requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs; and

(xviii) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the Loan funds.

ARTICLE V

USE OF THE PROPERTY

5.1 Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that the Property and the Improvements will be subject to recorded covenants that will restrict use of the Property to development of an affordable multi-family housing project, and that for a term of not less than twenty (20) years commencing upon the issuance of a final certificate of occupancy for the Project not fewer than two (2) of the HOME-Assisted Units in the Project shall be available at Affordable Rents to households whose income is no greater than fifty percent (50%) of Area Median Income, and the remaining seven (7) HOME-Assisted Units shall be available at Affordable Rents to households whose income is no greater than sixty percent (60%) of Area Median Income, in accordance with the terms hereof and the Regulatory Agreement.

5.2 Maintenance. Developer shall at its own expense, maintain the Property and the Improvements, including the landscaping and common areas in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable laws, including but not limited to 24 C.F.R. Section 92.251 and the lead-based paint requirements in 24 C.F.R. part 35. Without limiting the foregoing, Developer agrees to maintain the Property and the Improvements (including without limitation, landscaping, driveways, parking areas, and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property. Developer shall prevent and/or rectify any physical deterioration of the Improvements and shall make all repairs, renewals and replacements necessary to keep the Property and the Improvements in good condition and repair.

5.3 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property or the Improvements, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property or Improvements; provided, however, 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, 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.

5.4 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Improvements, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or

(d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Improvements, or part thereof, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or Improvements, or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) In Deeds, the following language shall appear:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

"(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases, the following language shall appear:

"(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property 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 of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

"(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts, the following language shall appear:

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

ARTICLE VI

ENVIRONMENTAL MATTERS

6.1 Developer's Post-Closing Obligations. Developer hereby covenants and agrees that:

(1) Developer shall not knowingly permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material or otherwise knowingly permit the presence or release of Hazardous Material in, on, under, about or from the Property with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential properties similar in nature to the Property and any commercial uses developed as part of the Project, and used, stored and disposed of in compliance with Environmental Laws.

(2) Developer shall keep and maintain the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Environmental Laws.

(3) Upon receiving actual knowledge of the same, Developer shall immediately advise City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against the Developer or the Property

relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material; (iii) the presence or release of any Hazardous Material in, on, under, about or from the Property; or (iv) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Environmental Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**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 Claim.

(4) Without the City's prior written consent, which shall not be unreasonably withheld or delayed, Developer shall not take any remedial action in response to the presence of any Hazardous Material in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim. City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer.

6.2 Intentionally omitted.

6.3 Intentionally omitted.

6.4 City's Rights. In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the City's or the Trustee's rights and remedies under the Deed of Trust, the City may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Developer to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the City's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Developer shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Developer knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) reasonable attorneys' fees, incurred by the City in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the default rate specified in the Note, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the City upon its demand made at any time following the conclusion of such action.

6.5 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement are in no way limited or otherwise affected by any information the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Material, whether the City obtained such information from the Developer or from its own investigations.

6.6 Definitions.

6.6.1 "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", infectious waste", toxic substance", toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

6.6.2 "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq*.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq*.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*.), the Clean Air Act (42 U.S.C. § 7401 *et seq*.), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq*.), the Oil Pollution Act (33 U.S.C. § 2701 *et seq*.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq*.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq*.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq*.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq*.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq*.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq*.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq*.).

ARTICLE VII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its principals are of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to the expiration of the term of the Regulatory Agreement, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of City which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the City's consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis.

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual residences to tenants for occupancy as their principal residence in accordance with the Regulatory Agreement and the lease of the commercial space; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project in accordance with the approved Financing Plan as it may be updated with City approval, and subject to the requirements of Article VII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a Transfer to a tax-exempt entity under the direct control of or under common control with MidPen Housing Corporation, a California nonprofit public benefit corporation ("**MidPen")** or the Developer; (vi) a Transfer to a limited partnership in which a tax-exempt affiliate of MidPen or Developer is the managing general partner ("**Approved Partnership**"); (vii) the admission of limited partners and any transfer of limited partnership interests in accordance withthe Approved Partnership agreement of limited partnership (the "**Partnership Agreement**"); (viii) the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, provided that the replacement general partner is an entity reasonably satisfactory to City; (ix) the transfer of the general partner's interest to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, provided such replacement general partner is reasonably satisfactory to City.

7.4 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv), (v), (vi) and

(vii) of Section 7.3, and solely with respect to removal of the general partner by the investor limited partner for a default under the Partnership Agreement, clause (viii) of Section 7.3, provided that the provisions of this Section 7.4 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (viii) of Section 7.3):

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(ii) The Developer and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement and the other Loan Documents arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Developer, the proposed Transfer shall be deemed approved.

7.5 Effect of Transfer without City Consent.

7.5.1 In the absence of specific written agreement by the City, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

7.5.2 It shall be an Event of Developer Default hereunder entitling City to pursue remedies including without limitation, termination of this Agreement and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Developer assigns or Transfers this Agreement, the Improvements, or the Property in violation of Article VII.

ARTICLE VIII

SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Property or the Improvements only for the purpose of securing loans for the purpose of financing the acquisition of the Property, the design and construction of the Improvements, and other expenditures reasonably necessary for development of the Property pursuant to this Agreement. Developer shall not enter into any conveyance for such financing that is not contemplated in the Financing Plan as it may be updated with City approval, without the prior written approval of the City's Authorized Representative or his or her designee. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition, construction and land development.

8.2 Subordination. The City agrees that City will not withhold consent to reasonable requests for subordination of the Deed of Trust and Regulatory Agreement to deeds of trust provided for the benefit of lenders identified in the Financing Plan as it may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights and the rights set forth in Section 8.6 below.

8.3 Holder Not Obligated to Construct. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to complete construction of the Improvements or to guarantee such completion. 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 or improvements provided for or authorized by this Agreement.

8.4 Notice of Default and Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property or the Improvements, provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach within the cure period provided to Developer extended by an additional sixty (60) days. In the event that possession of the Property or the Improvements (or any portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Property or Improvements, as applicable, within the applicable cure period, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify City of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer's obligations to City under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the Project and the Improvements and submit evidence reasonably satisfactory to City that it has the development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such holder properly completing the Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement.

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

8.6 City Right to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by the Property or the Improvements, City may cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Developer. In such event, Developer shall be liable for, and City shall be entitled to reimbursement from Developer for all costs and expenses incurred by City associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the City Deed of Trust.

8.7 Holder to be Notified. Developer agrees to use best efforts to ensure that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged and accepted in writing by the holder prior to its creating any security right or interest in the Property or the Improvements.

8.8 Modifications to Agreement. City shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter City's substantive rights and obligations under this Agreement.

8.9 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.1 Event of Developer Default. The following events shall constitute an event of default on the part of Developer hereunder ("**Event of Developer Default**"):

(a) Developer fails to commence or complete construction of the Project within the time period set forth in Section 4.1, or subject to force majeure, abandons or suspends construction of the Project prior to completion for a period of thirty (30) days or more;

(b) Developer fails to pay when due the principal and interest (if any) payable under the Note, or Developer fails to timely make the payment due pursuant to Section 4.5.1 above, and such failure continues for ten (10) days after City notifies Developer thereof in writing;

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

(d) Developer fails to maintain insurance as required pursuant to this Agreement, and Developer fails to cure such default within five (5) business days;

(e) Developer fails to pay prior to delinquency taxes or assessments due on the Property or the Improvements or fails to pay when due any other charge that may result in a lien on the Property or the Improvements, and Developer fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(f) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(g) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement or Developer's request for the Loan proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Developer or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(i) A court of competent 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 reorganization of the Developer or seeking any arrangement for Developer under 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 its properties, or (4) directing the winding up or liquidation of the Developer, in each case if such decree, order, petition, or appointment is not removed or rescinded within ninety (90) days;

(j) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) 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 pursuant to paragraphs (h) or (i) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(l) An event of default arises under any Loan Document and remains uncured beyond any applicable cure period; or

(m) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Developer Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion.

9.2 City Default. An event of default on the part of City ("**Event of City Default**") shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of sixty (60) days after written notice thereof from Developer to City, or in the case of a default which cannot with due diligence be cured within sixty (60) days, City fails to commence to cure the default within sixty (60) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

9.3 City's Right to Terminate Agreement. If an Event of Developer Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City makes such election, City shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

9.4 City's Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Developer Default and the expiration of any applicable cure period, City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Developer, except for notices or demands required by law or expressly required pursuant to the Loan Documents, exercise one or more of the following remedies:

(a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;

(b) Seek specific performance to enforce the terms of the Loan Documents;

(c) Foreclose on the Property pursuant to the Deed of Trust;

(d) Terminate this Agreement pursuant to Section 9.3;

(d) Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the Loan Documents and City's rights thereunder.

9.5 Developer's Remedies Upon an Event of City Default. Upon the occurrence of an Event of City Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, Developer may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement, and may pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the Loan Documents and Developer's rights thereunder.

9.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding anything to the contrary set forth herein, a Party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

9.7 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

9.8 Construction Plans. If this Agreement is terminated by mutual agreement of the Parties or by City as a result of an Event of Developer Default, the Developer, at no cost to the City, shall deliver to the City copies of all construction plans and studies in the Developer's possession or in the possession of the Developer' s consultants related to development of the Project on the Property, including without limitation, the Construction Plans, subject only to the rights of senior construction lenders identified in the Financing Plan as it may be updated with City approval. If the City utilizes the Construction Plans or studies, the City shall indemnify the Developer for any claims arising from such use.

9.9 Rights of Limited Partners. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to the limited partner(s) in accordance with Section 11. The limited partner(s) shall have the same right as Developer to cure or remedy any default hereunder within the cure period provided to Developer extended by an additional sixty (60) days; provided however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general partner of Developer in order to cure such default, then the cure period shall be extended by an additional sixty (60) days after the removal and replacement of such general partner, provided that the limited partners have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement.

ARTICLE X

INDEMNITY AND INSURANCE.

10.1 Indemnity. Developer shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against any and all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with the development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof by Developer or Developer's contractors, subcontractors, agents, employees or any other party acting for or on behalf of Developer, or otherwise arising out of or in connection with Developer's performance or failure to perform under this Agreement, including without limitation, Claims arising or alleged to have arisen in connection with any violation of Applicable Laws in connection with the development, operation or management of the Project. Developer's indemnification obligations under this Section 10.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Developer that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

10.2 Liability, Workers Compensation, and Property Insurance.

(a) Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a commercial general liability policy in the amount of Two Million Dollars ($2,000,000) each occurrence, Two Million Dollars ($2,000,000) annual aggregate, together with Three Million Dollars ($3,000,000) excess liability coverage, or such other policy limits as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage; provided however, the coverage requirements for subcontractors shall be One Million Dollars ($1,000,000). Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars ($1,000,000), combined single limit including coverage for owned and non-owned vehicles. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Developer and its general partner shall furnish or cause to be furnished to City evidence satisfactory to City that Developer and its general partner, and any contractor with whom Developer has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars ($1,000,000) per accident.

(d) Upon commencement of construction work and continuing until issuance of the final certificate of occupancy or equivalent for the Project, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(e) upon completion of construction of the Project, Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(f) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payee as its interests may appear.

(g) Prior to commencement of construction work, Developer shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by City's Risk Manager, Developer shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(h) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse City for such expense upon receipt of billing from City.

(i) Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Developer shall furnish the required certificates and endorsements to City prior to the commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

(j) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, City's Risk Manager. At the option of and upon request by City's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Developer shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(k) Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstances, including, but not limited to, changes in the purchasing power of the dollar and the litigation climate in California. Within thirty (30) days following City's delivery of written notice of any such adjustments, Developer shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the close of escrow and the expiration or earlier termination of this Agreement.

11.2 Enforced Delay; Extension of Times of Performance. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by third parties concerning or arising out of this Agreement or unseasonable weather conditions ("**Force Majeure"**). An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date per the City-approved project schedule, any unavoidable delay notwithstanding.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and City (acting in the discretion of the City's Authorized Representative unless he or she determines in his or her discretion to refer such matter to the City Council). City and Developer acknowledge that, notwithstanding any contrary provision of this Agreement, adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the Project shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement or any other Loan Document shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Daly City 333 90th Street
Daly City, CA 94015-1895

Developer: MP Westlake Associates, L.P.
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attention: President

With a copy to: Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street, 17th Floor
Charlotte, NC 28202-6000
Attention: Director of Asset Management

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

11.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

11.7 Survival. All representations made by Developer hereunder and Developer's obligations pursuant to Sections 4.11, 4.14, 4.15, 6.2, 10.1 and 11.1 shall survive the expiration or termination of this Agreement.

11.8 Headings; Interpretation; Statutory References. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it. All references in the Loan Documents to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or t City shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.9 Action or Approval. Whenever action and/or approval by City is required under this Agreement, the City's Authorized Representative or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the City's Authorized Representative determines in his or her discretion that such action or approval requires referral to City Council for consideration.

11.10 Entire Agreement. This Agreement, together with the other Loan Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof. In the event of a conflict between this Agreement and the other Loan Documents, the more restrictive requirements shall control, as determined by the City's Authorized Representative.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

11.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.13 No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.14 Parties Not Co-Venturers; Independent Contractor; No City Relationship.. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Developer and City is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Developer (except as expressly provided in this Agreement) or to any third party with respect to the Project or the Loan. Developer and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Developer and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Developer shall not have any authority to act as an agent of City or to bind City to any obligation.

11.15 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

11.16 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of San Mateo County, California or in the Federal District Court for the Northern District of California.

11.17 Inspection of Books and Records. Upon request, Developer shall permit the City and/or HUD to inspect at reasonable times and on a confidential basis those books, records and all other documents of Developer necessary to determine Developer's compliance with the terms of this Agreement.

11.18 Political Activity. None of the funds, materials, property or services contributed by City to Developer under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

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

11.20 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Developer shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 *et seq.*, no person who is a director, officer, partner, trustee or employee or consultant of the Developer, or immediate family member of any of the preceding, shall make or participate in a decision, made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or the Developer. Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 *et seq.*, its implementing regulations manual and codes, and Government Code Section 1090.

(c) Developer shall comply with the conflict of interest provisions set forth in 24 C.F.R. 92.356 and 24 C.F.R. 570.611.

[SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the Parties have entered into this Affordable Housing Loan Agreement effective as of the date first written above.

AGENCY:

City of Daly City

By: ________________________________
____

ATTEST:

By:___________________________

APPROVED AS TO FORM:

____
City Attorney

DEVELOPER:

MP Westlake Asssociates, L.P.,
a California limited partnership

By: MP Westlake LLC,
a California limited liability company,
its general partner

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

By: ________________________________
Matthew Franklin, Assistant Secretary

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

Meeting Date: March 23, 2015

Subject: **Preliminary Plan for Planned Development PD 10-13-7945 (PD-69), Design Review DR-10-13-7946, and Environmental Review CEQA-10-13-8022 – Serramonte Shopping Center Expansion**

Recommended Action

Review the Preliminary Plan for Planned Development PD-69.

Planning Commission Discussion

On March 3, 2015, the Planning Commission voted 5-0 to recommend the applicant move to the Precise Plan stage to rezone Serramonte Shopping Center to Planned Development PD-69 to allow for a major expansion of the center.

Planning discussion items are shown in bold italics.

Background

Serramonte Shopping Center occupies an approximately 80-acre site that currently accommodates four major retailers: Macy's, Target, JC Penney, and Dick's Sporting Goods. These major retailers form the perimeter of the center's principal building, with Macy's located on the north side, JC Penney on the east side, Target on the southern side and Dick's Sporting Goods on the western side. All four stores are connected by an enclosed mall that is occupied by 90 retail stores and a food court.

The applicant and center owner, Daly City Serramonte Center, LLC, proposes to expand the center by adding 329,000 square feet of retail, entertainment, and restaurant space; a 75,000 square foot hotel, and a 65,000 square foot medical building. The expansion includes new freestanding structures at the center periphery, which would include office and commercial space, and a new hotel. A 194,000 square foot above-ground parking garage with 655 parking spaces would be constructed on the northwestern side of the center, which would replace some of the parking lost by construction of the center expansion. The applicant is also proposing to upgrade the main entry road off Serramonte Boulevard at Gellert Boulevard, and improve the property's loop road with enhanced landscaping, lighting, and directional signage.

The shopping center is proposed to be expanded through five phases of construction over the course of approximately ten years, as follows:

- **Phase One** would include a 12,000 square-foot Crunch fitness center, a 47,000 square-foot Dave and Busters, a 63,000 square-foot cinema, and 7,000 square feet of restaurant space;

- **Phase Two** would include 73,000 square feet of retail space in the southeast quadrant of the Project site;

- **Phase Three** would include 80,000 square feet of retail space in the southwest quadrant of the Project site;

- **Phase Four** would include a 75,000 square-foot five-story hotel and 72,000 square feet of retail at the northern most area of the Project site; and

- **Phase Five** would include a 65,000 square-foot medical building at the southwest area of the Project site at the corners of Serramonte and Callan Boulevards.

The proposed renovations would require grading, demolition, redistribution of parking and roadway realignments throughout most of the five phases. Phase One would include 25,000 square feet of demolition of the west wing. Phase Two would include demolition of 15,500 square feet of retail space of the southeast quadrant. Phase Four would include demolition of 12,500 square feet in the northwest quadrant. The addition of square footage will also displace portions of the surface parking. At the phase of development when the square footage is projected to exceed the 3.5 parking spaces per 1,000 square foot ratio, a 194,000 square-foot parking garage will be constructed, which will add another 655 spaces.

At buildout, the center is expected to result in an increase of more than 900 new employment opportunities.

- ***Commissioner Edelman asked about the long-term plan for the southwest corner of the site. Staff responded that development of this portion of the center is part of the long-term plan and that the developer was concentrating now on center's core.***

- ***Commissioner Sylvester expressed concern about the future of recycling areas, potential removal of the Denny's restaurant, and the future of the Farmer's Market. Commissioner Edelman pointed out that a previous plan identified the market being accommodated in an interior court in the center. Bill Brown, representing Equity One, responded that third-party recycling would continue to be supported, Denny's would remain until at least 2019 (the term of its lease), and that the Farmer's Market would continue to be accommodated at the southeast parking lot so long as it remained complementary to tenants and customer demand for it remained.***

- ***Commissioner Satorre expressed support for the planned hotel in the project and added that he felt that it was important that the hotel include a banquet facility. Commissioner Crump added that this would probably be a requirement. Mr. Brown responded that the hotel is in the long-term ten-year window and that a banquet facility is possible, if supported by demand.***

- ***Commissioner Tallerico pointed out that many senior citizens frequent the center and asked if it would be a possibility to have a senior center there, tied to other City facilities. Mr. Brown responded that the mall owner could look at that.***

- ***Commissioner Satorre requested that a flagpole be added to the center. Mr. Brown indicated that staff should add it as a Condition of Approval.***

- ***Mr. Brown indicated that the plan before the Commission will evolve, that the plan presented at the Precise Plan stage would be more fully developed, and that the center owner hoped to break ground on the new project in the third quarter of this year. He indicated that the plan represented an $80 to $100 million dollar investment for the mall owner.***

Planned Development

The Planned Development procedure consists of three interrelated steps of review: a Sketch Plan, a Preliminary Plan and a Precise Plan. These are sequential review steps during which plans are prepared with progressively more detail as they move through the process.

Applicants typically submit plans with sufficient detail to forego the Sketch Plan phase and proceed to the Planning Commission's review of the Preliminary Plan. In this case, the applicant submitted a Sketch Plan to provide the public, City staff and the Planning Commission with advance notice of the project and to gain initial input to proposal. The Planning Commission reviewed the Sketch Plan for the center expansion on December 3, 2013.

The following actions by the City are necessary for the project to proceed to the grading and building permit stages:

1. Certification of an Environmental Impact Report (EIR) in accordance with the requirements of the California Environmental Quality Act (CEQA);
2. Approval of a Planned Development (PD-69) Zoning District for the entire project site. The new PD-69 zoning district will replace the current C-1 Light Commercial and C-2 Heavy Commercial districts. Development standards and restrictions will be established through the approval of PD-69; and
3. Approval of Design Review for architectural character, site design, and landscaping.

Design Review

The newly renovated shopping center would incorporate designs that blend in with adjacent elevations and with a new color scheme that would be applied to the entire center. The freestanding buildings would be designed to suit the requirements of specific tenants; however, the exterior of the buildings would consist of smooth and textured stucco in various colors, colored concrete panels, multi-colored brick veneers, stone, tile, and concrete masonry (CMU) block. The retail storefronts would primarily consist of aluminum framing, in-filled with tinted glass.

At this stage of the process, detailed architectural plans and elevations have yet to be prepared. Because these details have not been submitted, the Design Review entitlement presently sought addresses the site plan only. The applicant will therefore be required to submit plans and elevations to the Design Review Committee to review the architectural aspects as each phase of the project is brought forward for approval. This approach will provide a greater level of flexibility for the center owner to be more responsive to market needs and development trends over the course of the buildout.

Parking

There exist 4,434 marked on-site parking spaces presently located on the shopping center property. There is also space available to accommodate up to 343 additional parking spaces in areas that are currently not marked. Therefore, the maximum capacity under existing conditions if all parking spaces were marked is 4,777 spaces. The proposed demolition and new development will displace approximately 879 surface parking spaces. To address this reduction in parking and new demand from the proposed new land uses, the applicant has proposed the construction of a new 194,000 square-foot parking garage west of Macy's, which at buildout would include 655 spaces. This structure parking, together with remaining lots that would be repaved and restriped in throughout the five phases of Project development, would provide a total of 4,411 spaces.

Parking demand for the shopping center was estimated by taking the existing parking occupancy, adding the trips associated with the proposed new land uses and subtracting the trips associated with the displaced land uses. The applicant has therefore proposed a parking ratio of 3.5 spaces per 1,000 square feet of proposed development. Using this factor, the proposed center (excluding the medical/dental office use, which is located in separate area adjacent to the Callan/Serramonte intersection) would require 4,349 parking spaces. The site plan currently shows that the center, upon complete build out, will provide 4,411 parking spaces, resulting in a parking space overage of about 62 spaces.

- ***Commissioner Crump asked about the construction phasing of the parking structure. Mr. Brown responded that parking will be built at one time.***

General Plan and Zoning Consistency

The General Plan designates Serramonte Shopping Center as Commercial Retail and Office (C-RO), while its current zoning is Light Commercial (C-1) and Heavy Commercial (C-2). If approved, the entire site would be rezoned to Planned Development (PD-69) and PD-69 zoning would dictate land use allowances and development regulations in lieu of the Zoning Ordinance. In developing the PD zone text language, staff would ensure that these allowances and regulations were consistent with the intent of the C-RO land use description identified in the General Plan.

The Circulation Element of the General Plan directs development to, "Accommodate the transit system by considering mechanisms which help public transit agencies reduce the headway times of their vehicles. which requires consideration of mechanisms to reduce transit vehicle headways (Policy CE-8). The Project serves as one of the key transit hubs in SamTrans' transit network in San Mateo County with seven routes directly serving the Project site. As part of the Project, the location and access to the on-site transit hub would be relocated approximately 250 feet to the south. The new location would reduce the distance buses have to travel to access the station. This in turn would reduce the time needed to enter and exit the transit hub, which is consistent with Policy CE-8.

Environmental Assessment

City staff initially reviewed the proposal under the requirements of the California Environmental Quality Act (CEQA) and found that the Project will likely have a significant effect on the environment. Therefore, an Environmental Impact Report (EIR) is required. A scoping meeting was conducted on May 21, 2014 at which time oral comments from affected agencies and the public were solicited. The Draft EIR will be available for a 45-day public review period beginning in late Mach 2015. Following the public review period, responses to the comments received will be prepared as part of the Final EIR, which will be presented to the Planning Commission and City Council during the Precise Plan review.

- ***Pam DiGiovanni, representing Sierra Club, added that the center expansion represented an opportunity to implement forward thinking concepts, such as green roofs and vehicle recharging stations, and that the Sierra Club looked forward to how the center could evolve not just economically, but make a social impact. She added that the City should conduct an extensive public outreach campaign for the project, not just the 300-foot notification that is typical.***

Respectfully submitted,

Michael VanLonkhuysen
Interim Planning Manager

Tatum Mothershead
Interim Director of Economic and
Community Development

Attachments
Attachment A – Location Map
Attachment B – Land Use Concept


SOUTHGATE AVE
CALLAN BLVD
INTERSTATE 280
SITE
(SERRAMONTE SHOPPING CENTER)
SERRAMONTE BLVD

serramonte

SERRAMONTE CENTER

DALY CITY, CA
APRIL 30, 2014

SITE PLAN - PHASING DIAGRAM

EQUITY ONE INC.

FIELD PAOLI

serramonte

SERRAMONTE CENTER

DALY CITY, CA
APRIL 30, 2014

CONCEPT MASTER PLAN

EQUITY ONE INC.

FIELD PAOLI

ORDINANCE NO. 1387

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY REPEALING AND REPLACING CHAPTER 12.16 (SIDEWALK REPAIR AND MAINTENANCE) AND AMENDING CHAPTERS 12.28 (SIGHT OBSTRUCTION), 12.40 (URBAN FORESTRY) AND 13.04 (WATER SERVICE) OF THE DALY CITY MUNICIPAL CODE

The City Council of the City of Daly City, DOES ORDAIN as follows:

SECTION 1. Chapter 12.16 of the Municipal Code is hereby repealed and replaced in its entirety to read as follows:

Chapter 12.16 SIDEWALK REPAIR AND MAINTENANCE

Sections:

12.16.010 Maintenance by property owners.

The owners of properties adjacent to, with dual-frontage, or fronting on any portion of an improved street or place, or a street whose area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall have a duty to maintain and shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and in such condition that the sidewalk will not interfere with the public convenience in the use of those works or areas except as to those conditions created or maintained in, on, along or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him or her by law or by the city authorities in charge thereof, and such persons shall be in a like duty in relation thereto.

12.16.020 Notice to repair—Duty to repair—Options.

When any portion of any sidewalk is defective, out of repair or pending reconstruction and/or in condition to endanger persons or property, or to interfere with the public convenience in the use thereof, the director of public works or designee shall notify the owner or person in possession of the property abutting or fronting on that defective or out of repair portion of the sidewalk, to repair the sidewalk in the manner provided in this chapter.

12.16.030 Liability for injuries to public.

The owner required by Section 12.16.020 to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a safe and non-dangerous condition as required by Section 12.16.020, a person who suffers injury to or damage to person or property, the owner shall be liable to such person for the resulting damage or injury.

12.16.040 Notice to repair.

Notice to repair may be given by delivering a written notice personally to the owner or to the person in possession of the property abutting or fronting on that portion of the sidewalk so out of repair, or by mailing a postal card, or by mailing a written notice postage prepaid to the person in possession of such property, or to the owner thereof at the last known address as the same appears on the last equalized assessment roll or to the name and address of the person owning such property as shown in the records of the office of the city clerk.

12.16.050 Notice to repair – contents.

The notice to repair shall include the specification of the work required to be done the manner of how the work is to be done and the materials to be used in the repair. The notice shall provide two (2) options available for the property owner to make the sidewalk repair. The notice shall provide a form for the property owner to use to notify the department of public works of the sidewalk repair option selected, and the notice shall include the information contained in Section 12.12.070.

12.16.060 Options to make repairs.

The property owner shall have two (2) options for making the required sidewalk repairs: (1) participation in the city's "sidewalk repair program"; or (2) performance of repairs him or herself. The property owner shall indicate on the form included with the notice which option the property owner chooses and shall deliver said form to the city within fourteen (14) days. The owner's failure to timely respond shall constitute the owner's assent to participate in the city's "sidewalk repair program."

12.16.070 Repairs performed by owner.

If electing to perform the repairs him or herself, the property owner, within fourteen (14) days after receipt of the notice to repair, shall: (1) obtain an encroachment permit from the public works department; (2) commence performance of the work, and diligently and without interruption prosecute the work to completion; (3) be responsible for the full cost of the repair including the cost of the required encroachment permit. If the property owner fails to timely obtain an encroachment permit and to commence and diligently prosecute the work without interruption, the director of public works shall make such repair, and the cost of that repair shall be a lien on the property pursuant to the provisions of this chapter

12.16.080 Repair performed by director of public works

A If the property owner has not commenced the repair and prosecuted it to completion with due diligence without interruption, as required by the notice and encroachment permit, or, if the property owner chooses to participate in the city's "sidewalk repair program," the director of public works shall repair the sidewalk in conjunction with other sidewalk repairs in the same general area pursuant to the provisions of this chapter.

B The public works director or designee shall determine the cost of the particular repair to the property owner's sidewalk; property owner shall be responsible for the total repair cost and the city shall bear no part of the cost unless agreed to in writing by the public works director based upon special circumstances or conditions.

C If the property owner elects to participates in the city's "sidewalk repair program" the property owner will pay the city's estimated cost of repair prior to the city including the particular location for repair in the city's "sidewalk repair program" or commencing any repair work.

12.16.110 Records of director of public works.

A The director of public works shall cause to be kept a permanent record containing the description of each parcel of property upon which a notice to repair has been posted, the name of the owner, if known, the date on which such notice was posted, and the charges incurred by the city in causing such repair to be made, and all incidental expenses in connection therewith. Each such entry shall be made as soon as practicable after completion of each act.

B If the property owner elects to participate in the city's "sidewalk repair program" or if the city makes or causes the repairs to be made, the charges incurred thereof shall be determined by the director of public works in accordance with the provisions of this chapter. The director of finance shall prepare and mail a statement for the same to the last known address of the owner of the property

12.16.120 Costs—Assessment—Lien.

After confirming the report, determining any objections or protests and confirming the assessments, the city council shall assess the cost of repair against the parcel of property fronting upon the sidewalk upon which such repair was made. Such cost so assessed, if not paid within thirty (30) days of mailing the invoice, shall constitute a special assessment against that parcel of property, and shall be a lien on the property for the amount thereof. Such lien shall continue until the assessment and all interest thereon are paid, or until it is discharged of record.

12.16.130 - Tree stumps in streets or sidewalks.

No person shall maintain or permit to remain in the ground in the public right of way, adjacent to, with dual-frontage or fronting of any premises owned or occupied by him, the stump of any tree which shall protrude above the surface of the earth, upon any street, sidewalk or thoroughfare in the city.

12.16.140 - Cutting down trees—Removal of stumps.

Wherever any tree growing upon any street or sidewalk in the city has been cut down, the owner or occupant of the premises adjacent to, with dual-frontage or in front of which the tree grew shall immediately uproot the stump and shall thereupon carry away and dispose of the same, and shall forthwith fill with the level of the street or sidewalk, any excavation made by uprooting such stump.

SECTION 2. Chapter 12.28 of the Municipal Code is hereby amended as follows:

Chapter 12.28 SIGHT OBSTRUCTION

12.28.010 Plants in parkways obstructing traffic visibility.

Whenever the public works director finds that any hedge, shrubbery or tree growing in a parkway obstruct the view of any intersection, or any traffic upon the streets approaching such intersection, the public works director shall cause the hedge, shrubbery or tree to be immediately removed or reduced in height at the property owner's expense.

SECTION 3. Chapter 12.40 of the Municipal Code is hereby amended as follows:

Chapter 12.40 URBAN FORESTRY

12.40.020 Definitions, "Street Tree" definition is amended to read as follows:

"Street Tree" includes any woody perennial plant which when mature has the following characteristics: a single main axis or stem commonly achieving fifteen feet in height, and capable of being shaped and pruned to develop a branch free trunk at least nine feet in height or capable of being pruned in such a manner that the branching will grow parallel with the sidewalk or street which is growing upon any parkway, easement, right-of-ways or other publicly owned area.

12.40.050 C is amended to read as follows:

C. Any tree, shrub, vine or flower that is deemed harmful on oral or other physical contact by a person as determined by the director of public works or an authorized representative.

12.40.060 A is amended to read as follows:

A. When any public nuisance as defined in Section 12.40.050 C. above exists, a notice shall be placed on the door of the residence. Utility companies responsible for electrical conductors shall be notified by a documented telephone call. A follow-up notice shall be mailed to the resident property owner by ordinary United States Mail. The notice shall describe the condition, state the work necessary to remedy the condition and shall specify the time within which the work must be performed. Any property owner may, within ten days after the mailing of the notice, request a hearing before the appeals board on the issue of whether a public nuisance actually exists. Appeals shall be conducted in accordance with the procedures set forth in Section 12.40.030.

12.40.080 is amended to read as follows:

Plans submitted to the city for the construction, repair or alteration of any building, house or structure shall include provisions for sufficient guards or protectors to prevent injury to any existing publicly owned trees, shrubs, flowers or vines. Such plans for protection shall be approved by the director of public works ten days prior to the issuance of permit to proceed.

12.40.090 is amended to read as follows:

If construction, repair or alteration of any building, house or structure in the city causes a tree to be removed from public property and there is insufficient space to replace the tree in the parkway, easement or public area, the property owner shall:

A. Plant a comparable size tree species approved by the city parks division, minimum twenty-four inch box size, in the private landscape area; or

B. Pay to the city the city's cost of replacing the removed tree, as provided by Section 12.40.100.

12.40.100 is hereby amended to read as follows:

A. Replacement trees shall be a minimum of two, each twenty-four inch box size, the combined canopy of which is approximately ten percent of the average street tree canopy in the city, (one hundred seventy-five square feet), or replacement canopy of seventeen square feet. The applicant shall post a cash deposit with the city in an amount determined by the director of public works which shall include labor costs for replanting and removal if the director of public works determines that the tree is a total loss.

B. If it is determined that replacement trees cannot be planted in the same frontage costs for two trees, each twenty-four inch box size plus labor for planting, shall remain in effect. These replacement trees shall be planted on specified alternate public property.

C. Where injury has occurred to the tree, shrub, flower or vine during the erection, repair, construction or alteration of any building, house or structure, or by truck and/or car accident, house moving or by acts of vandalism, the offending party or insurance company shall not be released from liability until the director of public works or his/her authorized representative determines that the tree has fully recovered (see Section 12.40.140).

12.40.110 A is hereby amended to read as follows:

A. No person shall spray, root-prune, fertilize, stake, guy, rod, cable, plant, transplant, grade or trench within the foliage drip line or remove any public, right-of-way or street tree, vine, shrub or flower without obtaining a permit from the director of public works. Notwithstanding, weed and trash removal from the base of the tree is permitted and is the responsibility of the abutting property owner.

12.40.120 is hereby amended to read as follows:

A. It is unlawful for any person, firm or corporation to cut down, remove or destroy any tree growing upon any parkway, easement, right-of-ways or other publicly owned area without first securing a permit to do so from the director of public works.

B. Application for a permit to cut down, remove, transplant or destroy any live growing tree on any parkway, easement, right-of-ways or other publicly owned area within the city shall be filed in the office of the director of public works and shall be accompanied by the specific reasons for removal. The director of public works shall investigate the application to determine the conditions under which the permit may be granted or denied. The application shall also be accompanied with a permit fee.

C. The director of public works or his/her authorized representative shall submit a report and decision to the requester with a copy to public works/engineering and economic and community development (ECD)/planning.

D. If the decision is to grant removal of a live, healthy tree, the costs for removal shall be paid by the requester.

E. The requester may obtain removal cost estimates from a private tree contractor. Removal specifications and inspection of private contractor's work shall be required by the city.

F. A cash deposit in an amount specified by the director of public works shall be deposited with the public works department to insure job completion and cleanup.

12.40.130 A and C are hereby amended to read as follows:

A. The removal conditions outlined in Section 12.40.120 may be waived by the director of public works if the street tree has been damaged beyond repair by natural causes or has died by natural causes. In such cases, the tree will be removed and replaced at no cost to the property owner.

C. The director of public works shall determine cause of damage and death.

12.40.140 is hereby amended to read as follows:

A. Replacement trees shall be a minimum of two, each twenty-four inch box size, the combined canopy of which is approximately ten percent of the average street tree canopy in the city, (one hundred seventy-five square feet) or replacement canopy of seventeen square feet. The applicant shall post a cash deposit with the city in an amount determined by the director of public works which shall include labor costs for planting.

B. If it is determined that replacement trees cannot be planted in the same frontage, costs for two trees, each twenty-four inch size, plus labor for planting, shall remain in effect. This replacement tree shall be planted on specified alternate public property.

C. Replacement tree species shall be determined by the director of public works.

12.40.150 C is hereby amended to read as follows:

C. Tree species shall be designated by the director of public works or his/her designee.

12.40.180 is hereby amended to read as follows:

In the event that any person, firm or corporation desires to fill in or close the public parkway or tree planting easement with any material that prevents the entry of water or the exchange of gases to the atmosphere, they shall make application with the director of public works.

SECTION 4. Chapter13.04 of the Daly City Municipal Code is hereby amended as follows:

Chapter 13.04 WATER SERVICES

13.04.020 is hereby amended to read as follows:

13.04.020 Director of Water and Wastewater Resources – Duties and responsibilities

A. The director of water and wastewater resources shall keep and maintain all water production, storage and distribution equipment and property in efficient operating order. The director shall recommend to the city council and to the city manager such work in the nature of public projects which the director deems necessary for the efficient operation of the water department. The director shall supervise such projects as have been approved. The director shall have general authority over the day-to-day operation of all employees whose duties relate to the operation and maintenance of the water department. The director shall propose, and recommend to the city council, rules and regulations for the operation of the water department, if necessary.

B. The director of water and wastewater resources shall keep an accurate record of all houses vacated and promptly report such vacancy to the director of finance. He/she shall shut off water on premises which have been vacated and make prompt report of all matters coming to his knowledge in connection with the water system which will enable the director of finance to promptly enforce the collection of water bills due to the city.

C. The director of water and wastewater shall be responsible for all matters relating to construction, operation and maintenance of the water production, storage and distribution system throughout the city, and he/she shall also be responsible for all property of the city used in conjunction with the production, storage and distribution of water, whether located inside or outside of the city. Supervisory positions under the general authority of the director of water and wastewater resources previously established within the classified service of the city by the city council are continued in effect, but the city council may increase or eliminate the same in the manner provided by law.

13.04.180 is hereby amended to read as follows:

Where water service is found disconnected it may be reconnected only by written application to the director of water and wastewater resources.

13.04.190 is hereby amended to read as follows:

All water connections of larger size than five-eighths inch or of a different character or nature than those installed or contemplated by the city, at the discretion of the city council, may be made upon the written application of the consumer, filed with the director of water and wastewater resources, and at the consumer's expense. The charge as fixed by the city council shall be deposited with the director of finance before such connections or changes are made and if the money so deposited shall prove to be insufficient to defray the cost of making any such alteration or changes, then an additional charge shall be made, and unless the same is paid within five days after notice of such additional cost, the water connection shall be shut off until all such costs and charges and cost of reconnection are paid. If such estimated sum deposited is in excess of the cost of such reconnection or change, the difference shall be returned to the applicant.

SECTION 5. Environmental Determination. The City Council of the City of Daly City finds and determines that the implementation of measures described in this Chapter is in furtherance police powers of the City of Daly City, and that these purposes are exempt from the provisions of the California Environmental Quality Act (CEQA); Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code, as provided in categorical exemption Classes 1, 4, 5, 7, 8, 9, and or 21 of the CEQA Guidelines (Title 14, *California Code of Regulations*, Sections 15301-15329).

SECTION 6. Severability: If any section, subsection or sentence of this Ordinance is found by a court of competent jurisdiction to be invalid or unlawful, the City Council finds and declares that the remainder of this ordinance would be and is enforceable and would have been adopted notwithstanding the finding of invalidity as to any section, subsection or sentence.

SECTION 7. Effective Date and Publication: Pursuant to the provisions of Government Code Section 36933, a summary of this ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post it in the City Clerk's office a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall (1) publish the summary and (2) post in the City Clerk's office a certified copy of the full text of this ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting. This ordinance shall become effective thirty (30) days from and after its adoption

Introduced this ______9th____day of_______March_______, 2015.

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the __________day of___________________, 2015, by the following vote:

AYES, Councilmembers:____

____

NOES, Councilmembers:____

ABSENT, Councilmembers:____

____

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

____

MAYOR OF THE CITY OF DALY CITY

ORDINANCE NO. 1388

AN ORDINANCE OF THE CITY OF DALY CITY AMENDING THE DALY CITY ZONING MAP – AMENDING ORDINANCE NO. 1329 RE PLANNED DEVELOPMENT STANDARDS FOR PD-65

Sullivan Pierce Senior Apartments and Retail Center, Daly City, California

Section 1. Findings. The City Council of the City of Daly City finds that, as conditioned, Zone Change ZC-11-14-10021, amending Planned Development PD-67, is in accordance with Chapter 17 of the Daly City Municipal Code. Approval of the proposed project will not be detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the vicinity. The proposed planned development would not be detrimental to property and improvement in the neighborhood or result in substantial environmental damage or disturbance. The City Council further finds that the conversion of 24 additional apartment units into assisted-living units would provide residents the opportunity to "age in place" by having the option for residents to move from their independent living units into the assisted-living units as their needs may change over time.

BE IT ORDAINED by the City Council of the City of Daly City, as follows:

Section 2. Zoning Reclassification. The zoning as designated under Ordinance No. 1329, regarding Planned Development Standards for PD-65, is hereby amended. All improvements shall comply with the approved amended Planned Development Standards adopted for PD-65, as amended.

PLANNED DEVELOPMENT STANDARDS
PLANNED DEVELOPMENT ZONE PD-65B
SULLIVAN PIERCE SENIOR APARTMENTS AND RETAIL CENTER

The purpose and intent of these Planned Development Standards is to establish a Planned Development Zoning District for PD-65B, which encompasses the entire project site.

I. GENERAL

A. When these planned development standards conflict with other sections of the Zoning Ordinance, these standards prevail only to the extent of the conflict. Where these planned development standards do not provide regulations, the Zoning Ordinance shall apply as to the most similar land use or standard.

B. Any modifications to plans approved by the City Council shall require an amendment of the original PD approval and shall be subject to separate approval by the Planning Commission and City Council. The Planning Division may approve minor changes of the approved plans due to code requirements or conditions of approval.

C. All structures, landscape areas, required facilities and amenities shall be maintained in a neat, safe, and healthful condition, subject to improvement and upgrading of plans as required by this Planned Development approval.

II. PERMITTED USES

The sole permitted uses on the subject property shall be a 208-unit senior apartment complex with up to 104 assisted living units, 14,000 square foot retail space with drive-through prescription drug pick-up, and 1,400 square foot satellite retail space. The satellite retail space shall consist of an establishment serving food and/or beverages prepared on-site where customers may order beverages and/or full meals from a walk-up counter for either on- or off-site consumption. The number of tables provided at the satellite retail location shall not be more than five for a total of ten patrons (the tables shall only have room for 2 seats). Additionally the following uses shall be permitted: apparel, books, dry cleaner, florist, bank, beauty supply, hair salon, cellular store, electronics/computers, record store, and sporting goods.

III. DEVELOPMENT STANDARDS

A. **Unit Maximum:** The number of independent living apartments shall not exceed 128 units and shall be provided on the third and fourth levels of the building. Between 80-104 assisted living units are required for the first, second, and third levels of the development. The 24 assisted living units on the third level may be used as independent apartments.

B. **Retail Maximum:** The number of square feet in the primary site retailer shall not exceed 14,400. The number of square feet of the satellite retailer shall not exceed 1,400.

C. **Parking:** The project shall continually provide a total of 267 parking spaces. A parking management plan shall be continually in effect at the site and shall be effective to all site occupants whether they be commercial, residential users, or the employees of the residential and assisted living development. The plan shall incorporate the provision of a parking permit for residential apartment occupants. The number of permits issued shall not exceed the number of parking spaces furnished in areas approved for parking exclusive of the retail parking lot.

D. **Additions to Structures:** The project setbacks shall be as identified in the approved plans. No residential or commercial buildings expansions shall be permitted on the subject site.

E. **Project Affordabilty:** The property shall continually have a deed restriction pertaining to it, ensuring the following affordability restrictions:

1. Fifteen percent of the total residential units (32 units) shall be deed restricted as "affordable rental units";

2. All of the affordable rental units shall be reserved for households with incomes at or below 50 percent of the Area Median Income adjusted by actual household size. Any affordable units occupied as of March 9, 2015, shall be converted to 50-percent Area Median Income units upon vacancy. Any vacant 70-percent Area Median Income units as of March 9, 2015, shall be converted immediately to 50-percent Area Median Income units;

3. Subject to Section E.2 above, the maximum rents for the affordable rental units shall not exceed 35 percent of 50 percent of the Area Median Income, adjusted by the presumed household size, divided by 12. Presumed household size shall mean 1.5 persons per one-bedroom and two persons per two-bedroom unit. All utilities (electricity, gas, water and trash removal) shall be included in the rent. All other covenants pertaining to the

affordable units described in the Second Amended and Restated Affordability Restriction recorded on September 6, 2013, will continue to apply;

4. Median Income shall mean the Area Median Income for households in San Mateo County, as published from time to time by the United States Department of Housing and Urban Development in a manner consistent with the determination of median gross income under Section 8 of the United States Housing Act of 1937, as amended.

5. All affordable units shall be distributed proportionally among one- and two-bedroom units (no three-bedroom units are proposed) and throughout the project.

7. An amended affordability restriction reflecting these requirements will be executed by the owner no later than April 9, 2015, and recorded with the San Mateo County Recorder's Office.

F. **Building Area Limit:** There shall be no additional square footage allowed in PD-65 beyond what is permitted through approval of the precise plan. The Planning Division is authorized to approve minor additions or alterations to square footage for the proposed project, if such changes are to meet specific code requirements and do not affect the overall mass of the building.

G. **Building Height Limit:** The maximum height allowed for PD-65 is 67 feet.

Section 3. Summary Publication: Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting. This Ordinance shall become effective thirty (30) days from and after its adoption.

Section 4. Environmental Determination: The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378, that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project as provided by the Act, in that it does not have a potential for resulting in a detrimental physical change in the environment, directly or ultimately, as provided in Title 14, Section 15378(a), and that it is also exempt under the definition of "project" in Section 15378(b)(3) in that it concern general policy and procedure making.

Section 5. Severability: If any section, subsection or sentence of this Ordinance is found by a court of competent jurisdiction to be invalid or unlawful, the City Council finds and declares that the remainder of this Ordinance would be and is enforceable and would have been adopted notwithstanding the finding of invalidity as to any section, subsection or sentence.

Introduced this ______9th____day of _______March_______, 2015.

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the _______day of ___________________2015, by the following vote:

AYES, Councilmembers____

____

NOES, Councilmembers____

Absent, Councilmembers:____

____

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

____

MAYOR OF THE CITY OF DALY CITY